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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 300

JERRY BRUNO, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 18, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

C. 101-276

UNITED STATES OF AMERICA,
Appellee,

—against—

JERRY BRUNO and
COLAGERIO IACONO,
Defendants-Appellants.

Statement Under Rule 13.

The indictment herein was filed in sealed form on December 6, 1937 and was opened December 21, 1937. The indictment charged a conspiracy to import, sell, transport, and distribute narcotic drugs in violation of U. S. Code, title 19, sections 1591 and 1593 (a) and (b); title 21, sections 173 and 174; title 26, sections 1043 and 1044.

The names of all the defendants are contained in the indictment, printed *ante*, pages 7 to 16. The defendants involved in the within appeal are Jerry Bruno and Colagerio Iacono.

The defendant Jerry Bruno was arraigned and pleaded not guilty on December 21, 1937 and bail was fixed in the sum of fifteen thousand (\$15,000.00) dollars. A real estate bond was furnished and defendant Jerry Bruno released on December 30, 1937.

The defendant Colagerio Iacono was arraigned and pleaded not guilty on May 2, 1938. Bail furnished by him under C101-98 was continued and the defendant released.

Statement Under Rule 13

The trial was commenced before Hon. Murray Hulbert and a jury on May 6, 1938 and was concluded on June 2, 1938.

The jury returned a verdict of guilty against the defendants, Jerry Bruno and Colagerio Iacono, among others.

Jerry Bruno was sentenced on June 2, 1938 to two years imprisonment and fined five thousand (\$5,000.00) dollars, defendant to stand committed until the fine is paid or he is otherwise discharged by law.

Colagerio Iacono was sentenced on June 13, 1938 to two years imprisonment and fined twenty-five hundred (\$2500.00) dollars, defendant to stand committed until the fine is paid or he is otherwise discharged by law.

Defendant Jerry Bruno filed his notice of appeal on June 7, 1938.

Defendant Colagerio Iacono filed his notice of appeal on June 17, 1938.

On June 28, 1938 bail was fixed for Jerry Bruno in the sum of fifteen thousand (\$15,000.00) dollars pending appeal, and for Colagerio Iacono in the sum of seventy-five hundred (\$7500.00) dollars pending appeal. Each of said defendants filed a real estate bond and were released pending appeal.

Defendant Jerry Bruno was represented at the trial by HENRY DRESCHER, Esq. His attorney on appeal is HERBERT ZELENSKO, Esq.

Colagerio Iacono was represented at the trial and is represented on appeal by SALVATORE J. IANNUCCI, Esq. by M. MICHAEL EDELSTEIN, Esq. of counsel.

Docket Entries

Criminal Docket

C. 101-276

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—against—

DON ALFONSO, et al., COLAGERIO
IACONO and JERRY BRUNO,
Defendants

December 6, 1937—Filed indictment (sealed).

December 21, 1937—Sealed indictment opened on motion
of Mr. Martin, Assistant U. S. Attorney.

December 21, 1937—Jerry Bruno pleads not guilty, bail
\$15,000 Remanded Leibell, J.

December 30, 1937—Filed recognizance for Jerry Bruno
\$15,000 Antoinette and Vincenzo La Sala, John
Revkevics and Flora A. Goldstein—Sureties.

January 12, 1938—Filed remand J. Bruno dated Decem-
ber 20, 1937, Leibell, J.

January 24, 1938—Filed notice of appearance for Jerry
Bruno by Henry A. Drescher.

Docket Entries

May 2, 1938—Colagerio Iacono pleads not guilty. Bail continued.

• • • • •

May 6, 1938—Government moves for trial as to following defendants before Murray Hulbert, J. • • •
C. Iacono • • • J. Bruno. Trial begun.

May 9, 1938—Trial continued.

May 10, 1938— “ “

11

11, “ “

12, “ “

13, “ “

16, “ “

17, “ “

18, “ “

19, “ “

20, “ “

23, “ “

May 24, 1938—Trial continued. Government rests. Motions to dismiss indictment and for a directed verdict of acquittal as to all defendants. Decision reserved.

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May 25, 1938—Motions made on May 24, 1938. Denied. Exceptions.

May 26, 1938—Trial continued.

May 27, 1938—Trial continued. Both sides rest. Defendants renew all motions made at the close of Government's case. Decision reserved.

May 31, 1938—• • • Motion denied. Exception. Summations.

Docket Entries

June 1, 1938—Court charges. Jury retires at 2:15 a. m.

June 6, 1938. Jury locked up for night.

June 2, 1938—Jury returns a verdict. . . . Jerry Bruno
 . . . Colagerio Iacono . . . found guilty.

Motion to set aside verdict as against Colagerio Iacono and for a direction of a verdict of acquittal. Decision reserved.

Motion to set aside verdict and for an arrest of judgment as to Jerry Bruno. Denied. Exception.

Colagerio Iacono sentence adjourned to June 13, 1938. Bail continued. Referred to Probation Officer. Filed judgment 38275. Jerry Bruno sentenced to two years and fine \$5000, to stand committed until fine is paid or otherwise discharged by law.

June 7, 1938—Filed notice of appeal and grounds for appeal of defendant, Jerry Bruno to United States Circuit Court of Appeals.

June 8, 1938—Jerry Bruno. Bail ordered discharged on consent of Mr. Martin, Assistant United States Attorney. Leibell, J.

June 10, 1938—Filed notice given to attorneys in re Jerry Bruno pursuant to Rule VII to appear on June 14, 1938 at 10 o'clock in the forenoon—room-1105—in order that the Court may give

Docket Entries

directions with respect to the preparation of record on appeal. Hulbert, J.

.

June 13, 1938—Filed judgment No. 38296. Colagerio Iacono sentenced to 2 years and fined \$2500. Defendant to stand committed until fine shall be paid or until he shall be otherwise discharged by due course of law. Murray Hulbert, J.

.

17 June 17, 1938—Filed notice of appeal of Colagerio Iacono and grounds of appeal.

.

June 18, 1938—Filed notice pursuant to Rule VII given to attorneys in re Colagerio Iacono with respect to the preparation of record on appeal. Hulbert, J.

.

June 28, 1938—Jerry Bruno. Bail fixed in the amount of \$15,000 pending appeal. Remanded. Hulbert, J.

18 June 28, 1938—Colagerio Iacono. Bail fixed in the amount of \$7500 pending appeal. Remanded. Time of defendants Jerry Bruno and Colagerio Iacono to perfect record on appeal extended to October 14, 1938. Hulbert, J.

.

July 6, 1938—Filed order that defendants Colagerio Iacono, Jerry Bruno . . . settle and file bill of exceptions, and assignment of errors on or before October 10, 1938. Hulbert, J.

.

Indictment

March 2, 1939—Filed bond pending appeal Jerry Bruno
\$15,000 (Real Estate Bond) Colagerio Iacono
\$7500 (Real Estate Bond).

Indictment

**IN THE DISTRICT COURT OF THE
UNITED STATES**

FOR THE SOUTHERN DISTRICT OF NEW YORK

Southern District of New York, ss: The Grand Jurors for the United States of America, being duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for that District, upon their oath present:

That heretofore, to wit, beginning on or about the 1st day of October, 1935, and continuing to the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court; at the Eastern District of New York; at New Orleans, Louisiana; at Waco, Texas; at Galveston, Texas; at Houston, Texas; at San Antonio, Texas; and at various other places in the United States of America to the grand jurors unknown,

1. Don Alphonso,
2. Angelica B. Angelica, alias B. Angelica, alias Biaggio Angelica,
3. Leo Attanasio,

Indictment

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4. Alphonso Attardi, alias Al, alias I. L. Attroad,

5. Josephine Attardi, alias Josie, alias G. Attroad,

6. Nick Bonura,

7. Philip Bonura,

8. Sladyslaus Boysa, alias Walter,

9. Willie Brown,

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10. Jerry Bruno,

11. Jimmy Campo,

12. Francois Caputo, alias Francois Capperio,

13. Gennaro Caputo, alias John Capperio,

14. Vincent Carreria, alias Vincent Carroll, alias Jimmy the Blond,

15. Josephine Carussotto, alias Guisseppina Carussotto,

16. Mary Carussotto,

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17. Charlie Casesa,

18. E. Cavaretta, alias Isidor Cavaretta, alias Isidor Caverallo,

19. Mike Cellentano, alias Celli,

20. Frank Cicciofera,

21. Angelina Colognia,

22. Louis Colognia,

23. Nino Conti,

24. Tony Conti,

25. Jimmy DiMaggio, alias Vincenzo DiMaggio, alias Vincent DiMaggio,

Indictment

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26. Josephine DiMaggio,
27. Dominick DiMarso, alias Dick LaRose,
28. John Doe, alias Pete the Bug,
29. John Doe, 2nd, alias Frankie,
30. John Doe, 3rd, alias Mickey,
31. John Doe, 4th, alias Joe Pinto,
32. John Doe, 5th, alias Joe Russo,
33. John Doe, 6th, alias Tony Marino, 26
34. John Doe, 7th, alias Phil,
35. John Doe, 8th, alias The Sailor,
36. Jerry Feraci,
37. Anthony Fiorica,
38. Frank Fiorica,
39. Nino Fiorica,
40. Tony Fiorica,
41. Jerry Fradella, 27
42. Joe Gagliano,
43. Nicholas Gentile, alias Cola Gentile, alias Don
Gentile, alias Nicola Gentile, alias Zio Cola,
44. Vincent Gentiluomo,
45. Frank Giorica,
46. Colagerio Iacono,
47. Lucien Ignaro, alias Luciano,

Indictment

48. Louis King,
49. Joe King,
50. Emma Cecelia Kirksey,
51. Charles LaGaipa, alias Big Nose Charlie, alias
Colagero LaGaipa,
52. Jose Lago, alias Joe,
53. Joe Lauza,
- 29 54. Louis Liguore, alias Big Nose Louie,
55. Ralph Liguorio, alias Ralph,
56. Anthony Lima,
57. Antoinette Lima,
58. Grace Lima,
59. Joe Lima,
60. Nino Lima,
61. Sam Maceo,
62. Joe Macey,
- 30 63. Joe Massa,
64. Al Mauro, alias Montana, alias Romano, alias
Scarface Al Capone,
65. William McDonald, alias Slim,
66. Charles Morgan,
67. Felix Papa, alias Philty, alias McCarthy,
68. Joe Passarello,
69. Oniofio Pecoraro,
70. Joe Pettruczi, alias Joseph Nicholas Pettruczi,

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71. Katherine Phillips,
72. Willie Ross,
73. Louis Ruppolo, alias Louis the Bum,
74. Daniel Scarbetti, alias Danny Spears, alias
Danny Murphy,
75. Joe Schipani, alias Little Joey,
76. Mrs. A. Scontrino,
77. Mike Sgitcayich,
78. Augustine Simoncini, alias LoPrimo,
79. Filipina Simoncini, alias Filippina Simoncini,
alias Fillie,
80. Thomas Siracuso,
81. Tony Spataro,
82. Dominick Vaccaro, alias Mimi,
83. Vincent Vallone,
84. John Vencileoni, alias Little Johnny, alias
Johnny the Frenchman,
85. J. D. Villini,
86. Anthony Virzi, alias Frank Cavito,
87. Mrs. Anthony Virzi,
88. Dominick Visco, alias Kelly,

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the defendants herein, and divers other persons to the grand jurors unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, to violate the United States Code, Title 19, Sections 1591 and 1593 (a) and (b); Title

Indictment

21, Sections 173 and 174; and Title 26, Sections 1043 and 1044.

34 It was part of said conspiracy that the said defendants herein, together with divers other persons to the grand jurors unknown, at the Southern District of New York and within the jurisdiction of this Court, would import and cause to be imported into the Southern District of New York large quantities of narcotic drugs on various transatlantic steamships, certain of which steamships were scheduled to arrive at the Port of New York; contrary to law, in that certain of said narcotic drugs were subject to duty and should have been invoiced and for which narcotic drugs dutiable consumption entry should have been made at the United States Custom House and Port of Entry with the United States Collector of Customs at the Port of New York, and that said defendants did fail to manifest the said narcotic drugs, said narcotic drugs being subject to duty under the Tariff Act of 1930, contrary to the provisions of United States Code, Title 19, Sections 1591 and 1593 (a) and (b), all of which the said defendants then and there well knew; and further contrary to law in that the importation and bringing of any narcotic drug into the United States except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only is expressly forbidden by Title 21, Sections 173 and 174 of the United States Code.

35 36 It was further a part of said conspiracy that the said defendants herein and divers other persons to the grand jurors unknown would arrange for the transportation of the said narcotic drugs from the pier of the said steamships or from some point or points within the harbor of the Port of New York, the location of said point or points being unknown to the grand jurors, after said

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narcotic drugs had been removed from the said steamships, to some point or points within the Borough of Manhattan, City, State and Southern District of New York, and there pursuant to a prearranged plan and scheme certain of the said defendants would receive the said narcotic drugs, communicate the fact of their arrival and receipt to other members of the said conspiracy, whereupon, in furtherance of said conspiracy, certain plans would be made and adopted for the further sale, transportation and distribution of said narcotic drugs to others of the said defendants, some in the Southern District of New York, some in Brooklyn in the Eastern District of New York, and others at distant points in the United States of America, to wit: New Orleans, Louisiana; Waco, Texas, Galveston, Texas; Houston, Texas; San Antonio, Texas; and various other places in the United States of America to the grand jurors unknown. 38

It was further a part of said conspiracy that pursuant to a prearranged plan and scheme the said defendants would sell and cause to be sold and make arrangements for the sale and disposition of the said narcotic drugs, and would receive payment therefor either in the name of the individual who acted as the recipient of the money or under some fictitious name for the purpose of concealing their true names and the nature of the business in which they were unlawfully engaged, contrary to law in that said sales of narcotic drugs would not be in the original stamped packages or from the original stamped packages, that is to say, that there would not be affixed to the containers in and from which the said defendants would sell the said narcotic drugs as aforesaid any United States Internal Revenue Stamps whatsoever, as required by Title 26, Section 1043 of the United States Code; and further contrary to law in that the said sales 39

Indictment

of narcotic drugs would not be in pursuance of written orders on forms issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, as required by Title 26, Section 1044 of the United States Code.

It was further a part of said conspiracy that certain of the said defendants and divers other persons to the grand jurors unknown would conceal said narcotic drugs at some place or places in the Southern District of New York, unknown to the grand jurors, pending their ultimate disposition.

It was further a part of said conspiracy that certain defendants, members of the said conspiracy, and divers other persons to the grand jurors unknown, at the Southern District of New York and within the jurisdiction of this Court, would transport and cause to be transported large quantities of the said narcotic drugs from the Borough of Manhattan, City, State and Southern District of New York to various points in the States of Louisiana and Texas and various other points in the United States to the grand jurors unknown, after said narcotic drugs had been imported and brought into the United States contrary to law, and that the said defendants then and there would well know that the said narcotic drugs had been imported and brought into the United States contrary to law, that is, contrary to the provisions of Sections 175 and 174, Title 21, United States Code.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 22nd day of January, 1937, the defendants Ralph Liguorio,

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alias Ralph, and Al Mauro, alias Montana, alias Romano, alias Scarface Al Capone were present at 380 Broome Street, Borough of Manhattan; City of New York.

2. And further in pursuance of said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this Court, on or about the 1st day of August, 1937, the defendant Nicholas Gentile, alias Cola Gentile, alias Don Gentile, alias Nicola Gentile, alias Zio Cola, left New York City, Southern District of New York, by automobile, to proceed to Texas.

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3. And further in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 6th day of April, 1937, the defendant E. Cavaretta, alias Isidor Cavaretta, alias Isidor Caverallo, appeared at 204 First Avenue, Borough of Manhattan, City of New York.

4. And further in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 16th day of April, 1937 the defendant Joe Lima appeared at 326 East 13th Street, Borough of Manhattan, City of New York.

45

5. And further in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 19th day of April, 1937, the defendant, Mrs. Josephine Attardi, alias Josie, alias G. Attroad, received a Western Union money order for \$1,017.20 at 339 East 21st Street, Borough of Manhattan, City of New York.

Indictment

6. And further in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 8th day of April, 1937, the defendant E. Cavaretta, alias Isidor Cavaretta, alias ~~Isidor Caverallo~~, cashed a Western Union money order in the amount of \$800.00 at 832 Broadway, Borough of Manhattan, City of New York.

47 7. And further in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, on or about the 31st day of March, 1936, the defendant Charlie Casesa received a Western Union money order for \$500.00 under the name of F. C. Carson at 18 Delancey Street, Borough of Manhattan, City of New York.

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 88, Title 18, U. S. C.).

LAMAR HARDY,
United States Attorney.

Bill of Exceptions**UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK****C. 101-276**

UNITED STATES OF AMERICA,**—against—****DON ALFONSO, et al.,
Defendants**

50

Before:**HON. MURRAY HULBERT,**
*United States District Judge,
and a Jury.***New York, May 6, 1938.**

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APPEARANCES:**LAMAR HARDY, Esq.,** United States Attorney, for the Government; **JOSEPH P. MARTIN, Esq.,** and **ABEL I. SMITH, Esq.,** Assistant U. S. Attorneys, of Counsel.**SALVATORE J. IANNUCCI, Esq.,** Attorney for Defendant Colagerio Iacono; **M. MICHAEL EDELSTEIN, Esq.,** of Counsel.**HENRY DRESCHER, Esq.,** Attorney for Defendant Jerry Bruno.

52 *John J. Esch—for Government—Direct*

The Jury was duly impanelled and sworn.

JOHN J. ESCH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

53 I am an agent of the Narcotic Bureau of the Treasury Department, and have been employed as such since November, 1924. I have a college education, and have received the degree of graduate of pharmacy from the University of Pittsburgh. I have been employed as an under-cover agent in this case from April 9th to May 24th, 1937, and have been operating in New York City under the name of Dr. Peter A. Swanson of Jacksonville, Florida.

54 I made my headquarters at various hotels throughout the city. From April 9th until April 20th, 1937, I was at the Cornish Arms Hotel; from April 20th to May 12th, 1937 at the Willard Hotel; from May 12th until May 19th, 1937, I was at the President Hotel. Then I moved to the Empire Hotel, where I remained from May 19th until May 25th, 1937.

At the Willard Hotel I installed a telephone tap on my phone, and also assisted Agent Paley in installing a telephone tap which was placed in an adjoining room. A microphone dictaphone was installed in the living room of my suite No. 65, which was used as a listening post.

I was assisted in my investigation by Michael Celli, alias Cellentano, whom I knew under the name of Michael Carmine at the Hotel Willard. He introduced me first to Louis Ruppolo and Lucien Ignaro, then to Joe King, then to Walter Boysa, and to a man known to me then

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as Danny Spears or Danny Murphy, whose correct name I don't know. Through these men I was introduced to Dominick La Rose and Jimmy the Blond, whose last name I don't know. He was known as Stanley and as Vincent to me. I have heard the name Vincent Carreria applied to him, but I did not know him under that name. These defendants communicated with me by calling me on the phone, but I never called them on the telephone.

Michael Cellentano first introduced me to Lucien Ignaro and Louis Ruppolo on April 10th, 1937, at a shoe repair shop at No. 790 Ninth Avenue, New York City. We first met on the sidewalk, and Cellentano was with me. We were approached by Ignaro and Ruppolo. Ruppolo directed then we go into the back room of this shoe repair shop. When we entered the back room, Celli said to me, "They gave me the stuff about five minutes before you arrived." He produced a package which he laid on the table. I picked the package up, and asked Ruppolo the price of the opium which I had ordered, and he told me it was \$110.

I then asked about the quality, and we opened the package and tested it by running a silver table knife which was on the table, through it. I examined it, smelled it and found that it smelled like opium. I discussed the quality of the opium with Lucien Ignaro and Ruppolo. Ignaro didn't speak very well. Ruppolo and he would talk and Ruppolo would repeat part of the conversation to me. They told me that they only handled the best grade of opium, and that this was a half of a kilo brick that they had cut in order to fill my order, and that if I wanted any more merchandise from them, that I could order it through Celli, and that they would furnish me anything in the way of drugs that I wanted.

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After we had run the silver knife through the package, it was passed between Ruppolo, myself and Ignaro, and back again to Ruppolo, who wrapped it and handed it to me. We left the shoe repair shop and went to the street where we again had further conversation. I asked Ruppolo whether he could furnish me with smoking equipment, such as lamps and yen hocks and a tray, and he stated that they could. He said they would take the matter up and furnish me with whatever I wanted. I told them I would take two lamps or four yen hocks and a tray, and he told me they would get in touch with me, and deliver them as soon as they could get hold of them.

Yen hocks are a form of steel needle with a flattened end, used in the smoking of opium.

Michael Celli and I then left Ignaro and Ruppolo, and had only gone a short distance from them when they called Celli back to them and handed him something. He joined me and we returned to the Cornish Arms Hotel, Eighth Avenue and 23rd Street, where I was staying at that time. He turned over to me a \$10 bill, stating that it was the \$10 that Ruppolo and Ignaro had given him for introducing them to me.

That \$10 bill corresponded with a list of money previously prepared by me, from the advancements of District No. 2 which comprises the Bureau of Narcotics, State of New York. It was money being used in the purchase of the opium in this case. I placed this \$10 bill in an envelope, sealed it, initialed it, and described on the face of the envelope what it represented. I turned this money over to the supervisor, Garland Williams, and it was placed in a small iron safe, which was moved intact from 641 Washington Street to our new offices at New Federal Office Build-

ing, 90 Church Street. This money was withdrawn from that safe during this trial, and I turned it over to Mr. Martin's office.

The envelope (Ex. 1A for identification only) is the one in which I placed the opium (Ex. 1B in evidence) purchased by me on April 10th. On April 12th, I delivered the sealed envelope to the United States Chemist.

(It was agreed between counsel for the government and the defense, that if the Government chemist were called, he would testify that he had made an analysis of the contents of the envelope, and that he found it to be gum opium.)

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I placed the \$10 bill, turned over to me by Michael Celli on April 10th, 1937, into an envelope (Ex. 2 in evidence), and turned it over to the district supervisor to be placed in the vault.

I first saw the yen hocks, the two Chinese opium lamps and the tray (Ex. 3 in evidence) when they were brought to my room 427 in the Cornish Arms Hotel on April 15th, 1937, by Louis Ruppolo, following the conversation that I had with him. I did not put them in this wrapping paper. They are in the original containers in which they came.

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I met these men on occasions from April 10th, 1937 on. On April 14th I met Ruppolo, Ignaro and Celli at the Central Bar and Grill on Eighth Avenue and 55th Street, New York City. I had asked Louis Ruppolo and Lucien Ignaro to furnish me with a sample of heroin in order that I could see the type of drugs which they were handling prior to placing a larger order. I also asked regarding the possibility of purchasing cocaine, and they told me that they could

furnish me anything in the way of narcotics that I wanted. We discussed the price of this cocaine and they quoted a price of \$25 an ounce in 25-ounce lots, and the price of heroin was placed at \$55 an ounce in single ounces or in less than kilo lots. Ignaro left the restaurant, and in five or ten minutes returned with two small parcels, one of which he handed to me, and the other of which he handed to Louis Ruppolo.

This parcel, (Ex. 4 in evidence) is the one which Lucien Ignaro handed to me in the Central Bar & Grill on April 14th. I then initialed the original package and placed it in an envelope, sealed the same, marked it for identification (Ex. 4 in evidence) and delivered it to Mr. Romig, the United States Chemist for analysis. I do not know what was done with it after I delivered it to Mr. Romig.

On April 15th, 1937, I saw Ruppolo and he delivered the lamps that I testified about. On April 16th, he called me on the phone, and wanted me to come to the Central Bar & Grill. I refused on the ground that I was ill. He stated that he would come right down if I would pay the taxicab, and he would bring the packages with him. We had very little other conversation. He came in a taxi, and I met him in front of the Cornish Arms Hotel. I rode in the cab with him about half a block. He handed me two envelopes and I paid him \$55 for each envelope. I paid for the cab and left, telling him to call me again that evening.

The two envelopes (Ex. 5B for identification only) are the envelopes which I received from Ruppolo in the taxicab in front of the Cornish Arms Hotel. I put

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them in this envelope (Ex. 5A in evidence), sealed it and delivered it to the United States Chemist on April 17th, 1937. The next time I saw it was in court here.

Ruppolo called me that evening and I complained about a shortage in the weight of the drugs. He stated that I must be wrong, because they had just opened two kilos and had weighed it on a pair of Government scales, parcel post scales; and that he had two more packages that they had taken from this kilo package, and that he would weigh those and check them, that he was sure that I must be wrong in the weight. Kilo is an abbreviation of kilogram, which is standard metric weight, representing 32 ounces.

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He asked me if I still had them, and I told him that I had to send them away, but that I would deal with him regarding the shortage in the weight, approximately 150 grains of stuff. Ruppolo came to the hotel the night of April 16th, and we discussed the shortage.

On April 18th, I again met Ruppolo and Ignaro at the Central Bar & Grill. We only discussed the shortage of this drug. They assured me the other two packages weighed the full ounce, and that they would save those packages for me.

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On April 19th, I again saw Ruppolo and Ignaro in the Central Bar & Grill. Celli joined us. We were in full view of Agent Johnson, who was in the restaurant. I counted \$55 of money from the advance fund of the Bureau, Narcotic District No. 2, for Ruppolo in view of Agent Johnson. I then left the Central Bar and entered Ruppolo's La Salle sedan parked at 55th Street between 8th and 9th Avenues. We rode

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to 9th Avenue and turned right towards 56th Street. In the center of the block he pulled over to the curb, and handed me a one ounce package of powder taken from the dashboard of the machine, for which I paid him \$55.

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The small envelope (Ex. 6A in evidence) I received from Ruppolo in his sedan on April 19th, 1937. The large envelope (Ex. 6 for identification only) is one in which I put the smaller envelope, and sealed and identified it, and then delivered it to the United States chemist. This is the first time I have seen the envelope since.

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After I received the small envelope from Ruppolo, I got out at 56th Street and 8th Avenue, and walked back to the Central Bar, where I was joined later by Ruppolo, Ignaro and Celli. I talked to them about cocaine, and they said they could furnish it in 25 ounce lots at \$25 an ounce. They said they could get it from an east side place downtown, and they would let me know how they would make deliveries. Ruppolo and Ignaro both asked whether I could get rid of a quantity of cocaine. I said I believed I could, but not all at one time. We then discussed the price of hundred ounce lots of cocaine. They said they would have to go to Canada to bring back most of the drugs, but that some of it was in the city, owned by one Montana, whom I now know as Al Mauro.

We had no further conversation of importance, and at the suggestion of Ruppolo and Ignaro I moved from the Cornish Arms Hotel to the Willard Hotel, 76th Street between West End Avenue and Broadway, on April 20th, 1937. At the Willard Hotel, I lived in Suite 65. My telephone number was Endicott 2-6900, extension 65.

Ruppolo and Ignaro visited me at the Willard Hotel on the night of April 20th, 1937. They visited me again on the 22nd of April at my room, and we had a conversation concerning cocaine and heroin, and the prices thereof.

In my room was installed a listening post which ran to a microphone dictaphone in the room next to my living room. There was also a tap placed on the telephone.

During this last conversation, we discussed generally the quality of opium and heroin, the methods of selling, distributing and cutting them, and how they were brought into the country. Ruppolo and Ignaro were in business together for sometime, and Ruppolo said that Ignaro had foreign connections in France.

Ruppolo talked to me by telephone practically every day. Ruppolo and Ignaro visited me at my apartment almost daily, and I told them that I would take a 25 ounce can of cocaine of the May and Baker brand. They said they were expecting a shipment of opium of the Turkish brand, which I would like because it gave more throws to the pounds than French opium. I said I would take a 25 ounce can if they would bring a sample first for examination. Ruppolo and a girl brought a sample to me on May 2nd, 1937. The girl went into the bath room and Ruppolo said, "Here, Doc, Lucien sent this." I examined the package which contained a crystalline substance. Shortly after I took the parcel to the chemist for examination, but did not leave it with him.

This package (Ex. 7A in evidence) is the package Ruppolo brought me on May 2nd. My initials are on

the envelope. I kept the package in my possession after the chemist examined it because they told me that they would come to the hotel to discuss the quality of the drug. On May 15th I placed the package in this envelope (Ex. 7 for identification only), sealed it, and took it to the United States chemist for analysis. This is the first time I have seen it since.

On May 5th Ruppolo and Ignaro came to my apartment in the evening. I produced the sample and we discussed the quality of the cocaine. I said the sample seemed to be damp, and had been stored in a damp place. They said it had been in a garage which was damp, but they were moving it. I said I did not want any that was damp, that it would have to be worked over. They said they would cut the price to \$23 if I took the bulk of it, and that I could then work it over myself. That same evening Dick La Rose, also known as Dominick La Rose, joined us.

I first saw La Rose the evening of May 10th in my apartment. He came there with Celli. I was then talking to Ignaro and Ruppolo. After they left, La Rose and Celli and I discussed cocaine. Celli introduced La Rose to me, and Lucien Ignaro and Ruppolo had stated he was one of the boys, and alright.

La Rose said that the cocaine I was trying to buy from Lucien Ignaro and Ruppolo was no longer in the hands of Montano, or Romeo, and was in the possession of Jerry Bruno. He quoted me a lesser price of \$375.00 for the 25 ounce can. La Rose telephoned from my room to the La Salle Restaurant and asked for Jerry Bruno.

This conversation was being overheard by a fellow

officer of mine, Agent Ben Groff.

La Rose waited a short period of time, and then said, "Jerry", and then carried on a conversation with him in Italian, which I didn't understand. After the conversation ended, La Rose said he would see Jerry Bruno and let me know the following day whether the price of \$375 was correct or not. On May 6th, La Rose told me that everything was arranged for the purchase of 25 ounces of cocaine, from Jerry Bruno. On May 7th, in my room in the presence of Celli, I paid La Rose \$375 from the advance fund of the District Number 2, Bureau of Narcotics.

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La Rose, Celli and I then took a hat box and went to the street, and entered my automobile. La Rose directed Celli to drive up Riverside Drive. I waited in a restaurant near Bruno's home. La Rose left us and returned, taking the hat box, and then told us to wait for him on 178th Street. I had arranged for other agents, Johnson, Kelly and Groff, to follow us.

I subsequently arrested Jerry Bruno. (Witness identifies Jerry Bruno in Court.)

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On May 24th, I received a package (Ex. 9, 9A in evidence) from Walter Boysa in the Empire Hotel. I did not give Boysa anything at the time I received the package.

Boysa came to the hotel about May 5th, 1937, with Ruppolo and Ignaro, who said that Boysa was one of their outfit. It was a social visit. I then saw Boysa almost every day until May 24th. On May 24th, in Room 1148 of the Empire Hotel, I received a telephone call from Ruppolo, and I told him that I was ready to take the 25 ounces of cocaine. He said that they would be right up, and they joined me in about fifteen

minutes in my room. Boysa then telephoned and I told him Ignaro and Ruppolo were there, and he said he was coming right up. I counted out \$575 before Ignaro, Ruppolo and Boysa, and took out of the \$575, \$10 which I had previously given Ruppolo as a deposit on the can of cocaine. They wanted to make delivery of the can in the street, and I refused. I wanted the can brought to my room. They decided then that Boysa would deliver the can of cocaine. They then locked me in the bath room while Ruppolo made a telephone call from my apartment. I was then released, and they told me to wait there with Boysa. They said a telephone call would come and that Boysa should answer the phone, and to do what Boysa told me to do.

Boysa answered the phone, and told me to stay in the room. He then returned with a package in which there was a can containing the drug. Ruppolo then came into the room. I examined the can which contained an inner package with a seal and a statement "May and Baker Planet Brand". I examined the contents, placed the can in a dresser drawer, and paid Ruppolo \$565.

Boysa and Ruppolo talked in the bath room. They then came out and Ruppolo returned to the bath room alone and counted the money into several small piles.

We started to go to a restaurant. Ruppolo went down first, as he said he was going to meet somebody downstairs, and pay them their share of the money. Boysa and I went down in the following elevator. In the lobby of the hotel I signaled agents who were there by my arrangement. We then were taken by the agents to my room. The agents took the drugs and took us to 641 Washington Street to the Narcotic Office.

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The money I paid Ruppolo I received from the District Supervisor, District No. 2, Bureau of Narcotics. Before I turned over the money, I made a list of all the serial numbers on the bills, and signed the list with my name. This list (Ex. 8 for identification only) is one which I and the other agents made up. Some of the money was retaken from Boysa, and some of the other money was recovered by other officers from other people.

This can (Exhibit 9 in evidence) contained the cocaine (Ex. 9A in evidence) which was delivered to me in my room at the Empire Hotel. This package, (Ex. 10B for identification only) contained the can and its contents brought to my room on May 24th, 1937. I put Ex. 10B into the envelope, Ex. 10A.

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I received the bundle (Ex. 11 in evidence) on May 13th, 1937 from Daniel Spears, alias Daniel Murphy, at the Italian Kitchen, 84 Columbus Avenue, New York City. I first met Spears on April 27th, 1937, at this same Italian Kitchen in company with Celli, and we had a conversation.

The bundle I received from Danny Spears was delivered by me to the Supervisor of District No. 2 at 641 Washington Street on May 14th, 1937.

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On the 28th day of April, 1937, at my room in the Willard Hotel, I received this package, (Ex. 12 in evidence) from Daniel Spears. Celli was present when I received it.

While I was in the office of District Supervisor Garland Williams, this package (Ex. 13 in evidence) was brought over by a woman whom I had seen before in the Italian Kitchen at 84 Columbus Avenue. When I saw her before, Daniel Spears and Celli were present.

I saw her again when she delivered the package (Ex. 13 in evidence) to me. That was the last time. After that package was delivered to me, I had a talk with Celli, Ruppolo, Boysa, Mauro and Spears. I spoke to Spears about it on May 25th, 1937, at the office of the District Supervisor of Narcotics, 641 Washington Street. After the talk, I marked the package with my initials and date. A sample from the package was sent to the chemist for examination, and the balance of the package was put in the vault of the Bureau of Narcotics for safe keeping. I next saw this package at this trial.

On May 13th, 1937, I had a conversation with Spears at the Italian Kitchen about Willie Ross. Spears asked me to accept a woman customer, who wished to purchase pure heroin. I refused to do business. Spears told me that he could send her to a relative of his, Willie Ross, on the east side, but that Willie Ross would sell her cut heroin from which he could not make money. Spears assured me the woman was all right, that he had put her in business twice before, and that she would buy at least 2 ounces of heroin per week. I said I did not wish to accept any customers in New York. I knew the woman to be an informer employed by the Narcotic Division of the United States Government. I never spoke to this woman about the case, or anyone mentioned in this case.

I had a conversation with Mauro, Ruppolo and Boysa about Jerry Bruno. I spoke to Mauro about Bruno last week. I spoke to Boysa about a month ago. I spoke to Ruppolo about Bruno on the night of May 5th, 1937 in my room at the Hotel Willard. I told Ruppolo I had an opportunity to buy cocaine through Jerry Bruno. Ruppolo said Bruno did not control the

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drugs at that time, but that the drugs were in the hands of Mauro. Ruppolo told me that La Rose could not obtain the drugs.

On May 6th, 1937, I again spoke to Ruppolo about Bruno. Ruppolo told me that if I had mentioned Ignaro to him, I would have known that I would have to reach Bruno through somebody more reliable than La Rose. Ruppolo then named the different people in the organization, Ignaro, Felix Papa, Jimmy the Blond, Joe Pettruzzi and himself.

I further discussed Bruno with Celli, Ruppolo and La Rose. With La Rose I had a discussion on May 5th, 1937, in the Willard Hotel at my room. I had a conversation with Celli about Bruno on the same day in my room at the Willard Hotel. Both these conversations with La Rose and Celli I have already testified about.

Sometime between April 20th and 27th, 1937, I had a conversation with Ruppolo and Ignaro concerning Don Alphonso at the Central Bar and Grill on 8th Avenue and 55th Street. Ruppolo told me he was not the big boss of the organization, but that Don Alphonso had been the big shot around the neighborhood, but had been arrested and was in jail. He told me I would have to be very careful, because the police would walk in, grab anybody and search them for drugs if they figured they might be connected with their outfit.

Cross Examination by Mr. Edelstein:

Ruppolo was arrested at the Central Bar and Grill. Boysa was arrested at the Hotel Empire on May 24th,

1937. Ruppolo was arrested the same day, as was Ignaro. I had been dealing with these persons from the time I first met them until they were arrested. During that time we had dealings relating to the purchase of April 10th, 1937, of opium, the receipt of a sample of heroin on April 14th, 1937, the purchase of 2 ounces of heroin on April 16th, 1937, the purchase of Chinese lamps and paraphernalia on April 15th, 1937, the purchase of heroin on April 19th, 1937, a sample of cocaine on May 2nd, 1937, and 25 ounces of cocaine on May 24th, 1937. These transactions were complete at the time of the arrest of Boysa, Ignaro and Ruppolo.

Cross Examination by Mr. Descher:

My connection with the defendants began April 10th, 1937. On May 24th, 1937, Boysa, Ruppolo, Ignaro and Felix Papa were arrested. My services relating to the collection of evidence ended then. During that period I procured monies from my Supervisor and disbursed them. The defendant Cellentano or Celli was in the employ of the United States Government on April 10th, 1937, and working under my direction. I met Ruppolo and Ignaro through him. My testimony is not based on an independent recollection. I have refreshed my memory from the case report, which I prepared after this case was completed. In relation to the monies expended in this case, I sustained a loss when Dominick La Rose absconded to California with \$375.

I turned the money over to him on May 7th, 1937 at my hotel room. He had previously been in my room on May 5th and May 6th, 1937. I ordered 25 ounces of cocaine from him. After the conversation I had with La Rose, I gave him \$375. He went to Cal-

John J. Esch—for Government—Cross

ifornia. I did not receive any cocaine at that time. Subsequently on May 25th, 1937, I had received a quantity of cocaine from Ruppolo, Boysa and Ignaro.

The telephone in my room at the Willard was tapped. There are agents in my department who speak Italian. None of the bills which I used in making payments were traced to Jerry Bruno.

On May 5th, 1937, La Rose was introduced to me as "one of the boys". I knew that meant that he is all right. After May 7th, 1937, when I turned over \$375 to La Rose, I left in an automobile and drove up Riverside Drive accompanied by La Rose and Celli. We parked the car at 178th Street and went around the corner to a restaurant. La Rose left us. He took along a hat box which I had previously taken from my room. He never returned and I received no delivery of cocaine that day. I later found out he was arrested in California. We went directly from my room to 178th Street, or somewhere in the vicinity.

Jerry Bruno was arrested on December 21st, 1937, seven months after this visit to 178th Street. Bruno was arrested in the foyer of the apartment building where he lived at Riverside Drive. I don't remember the street near which the building was, nor the number of the building. On May 5th, 6th and 7th, 1937, I did not know where Bruno resided. I did not know whether he changed his residence between May 7th and December 21st, 1937.

Cross Examination by Mr. Solomon:

I did not know Don Alphonso personally. I never had any dealings with him.

John J. Esch—for Government—Redirect
Michael Cellentano—for Government—Direct

Redirect Examination by Mr. Martin:

I do not know Mr. Drescher, the attorney who cross-examined me.

MICHAEL CELLENTANO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am one of the defendants herein, and I have entered a plea of guilty to this indictment charging me with conspiring to violate the narcotic laws.

Prior to my arrest, my business had to do with drugs. I was associated with other people. I was in the business for about three years prior to the date of my arrest, February, 1937. Prior to my arrest, I was associated only with Mauro, whose full name is Romeo Montana. I do not know the exact time I was associated with Mauro, but a couple of years ago before that I had made several purchases from him. I do not know the dates of these purchases. I bought from and sold to Mauro.

In March, 1937, I bought a can of cocaine from Mauro. It was a 25 ounce can. I received the can at Grand and Mulberry Streets. I sent Dominick La Rose to 380 Broome Street to meet Mauro. La Rose came back and had 25 ounces of cocaine. 380 Broome Street is a cafe. I used the Broome Street premises as a meeting place in connection with my drug bus-

iness.

I met Willie Ross about three years ago at 380 Broome Street where he was with Al Mauro. I never had any dealings with Willie Ross.

There was a telephone booth at 380 Broome Street to which I made phone calls. I telephoned there about two years ago and spoke to Mauro. In January, 1937, Mauro gave me about ten ounces of heroin. I did not pay for it. In the summer of 1936 he gave me about five pounds of opium. I paid him an average of \$65 a pound. I also met Mauro on the corner of Broome and Mulberry Streets, and on the corner of Kenmare and Mulberry Streets.

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I visited Mauro at his home in Brooklyn two days after Christmas of 1936, and I delivered to him 170 ounces of cocaine, and 10 pounds of opium which I obtained in Montreal, Canada, from a man named Johnny Di Carlo, and Harry Lurie. I got it on Christmas Day in 1936.

While in Canada I telephoned to Mauro, and told him that I had a quantity of cocaine and opium, and asked him if he would pay a certain price to get it into New York, and he said yes. I told him I would be in either Christmas Day or a day or two later, and he said to call him up when I got into New York with them. Mauro's telephone in December, 1936, was Bensonhurst 6-6693. I made the call from 1475 McRay Street, Montreal. I made the call from an apartment owned by a woman named Maguire. I remained in Canada two days after Christmas, when I took a train to Boston, I then took a train from Boston to New York. I had three bags of luggage with me. The narcotics were in these bags.

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106 When I got to New York, I went to the Hargrave Hotel at 72nd Street, and registered there under the name of Celli. I then telephoned Mauro and asked him to come and get them. He said, "No. Get in a taxicab and bring them out to me," which I did. When I got to his home, we unpacked the bags, counted the stuff, and I left it there for him to sell. I told him I wanted \$30 an ounce for the stuff, but he said it would be better to sell it for \$50 or \$60 an ounce out west; that he knew some people who had connections out there and would get in touch with them.

107 I again saw the drugs which I left with Mauro the latter part of February, or the early part of March, 1937, at Mauro's home. I again saw the drugs somewhere between the 15th and 18th of March, 1937. I was arrested in February of 1937. My business relations with Mauro continued, however, until about March 15th or 18th, 1937, a month or two after my arrest.

108 On March 15th, 1937, I got a 25 ounce can of cocaine at Grand and Mulberry Streets, which was given to me by La Rose or Di Marso, or something. The day before I had a conversation with Jerry Bruno, who is one of the defendants in court. (Witness identifies Bruno.)

I spoke to Bruno at 380 Broome Street in the cafe. I told him that I was having trouble getting my money for the can, and I asked him to intercede with Mauro for me. He said he would talk to Mauro, and that I was to send La Rose down. I sent La Rose down, and I received the 25 ounces of cocaine. I had no further conversations with Bruno relative to the drugs that I mentioned. I told Bruno that he was to get one-third of the stuff from Montana, or one-third of the

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money received for it for his assistance. I had no further talks with Bruno.

I have imported drugs or opium on the occasions I have testified to from 1929 to 1931.

I have not been associated with anybody except Mauro in the drug business. I know Don Alphonso and Willie Ross, in addition to Jerry Bruno. I see Jerry Bruno and Don Alphonso in the court room. (Witness identifies Don Alphonso.) I never knew Don Alphonso personally, but I knew of him for the last three years. I saw Don Alphonso fifteen or twenty times, everytime I did business with Mauro at the cafe, 380 Broome Street, Mauro and Ross were there at the times I saw Alphonso. I never heard any conversation between Alphonso and anybody in my presence. I spoke to Mauro about Alphonso and Ross the first or second time I met him in 1935 or 1936 in the cafe at Broome Street. Mauro told me that Willie Ross and Don Alphonso were partners of his. I told Mauro I would not do business with Alphonso or Willie Ross, but only with him. 110

I bought opium and heroin from Ignaro, whom I knew for five years. The last time I made a purchase from him was in April 1937, at which time I met him at 55th Street and 8th Avenue. Ignaro was with Ruppolo. There was also present a Federal man named Esch. 111

I told Ignaro I would want some heroin. They said they would let us know later on. Ignaro and Ruppolo brought us some samples, and the next day they delivered the heroin. Before that they delivered the opium.

1 112

Michael Cellentano—for Government—Direct

Agent Esch and myself gave the order for the opium and heroin. Esch paid the money. On the occasion when we bought a pound of opium, I was present when money was paid by Esch to Ruppolo and Ignaro. This occurred in the shoe making shop at 9th Avenue between 52nd and 53rd Streets, on March or April 17, 1937. The next day I had a conversation with Ruppolo and Ignaro in the restaurant at 55th Street and 8th Avenue known as the Central Cafe. We discussed the purchase of ten pounds of opium, and the question of price, quality and time of delivery. They did not know at the time.

1 113

At the time when they sold the pound of opium, they gave me \$10 which I turned over to Esch.

A few days later in the same cafe we had a conversation concerning heroin. Ignaro, Ruppolo and Esch were present. A day or two later they delivered the heroin at the Hotel Cornish Arms. They delivered an ounce at a time to Esch. I was not present at the delivery. I saw them again the same evening at the cafe at 55th Street. I gave them an order for heroin, and I asked them for some cooking lamps and for some yen-hocks. He said he would find out if he could get them for me, and eventually he did get the things for me and delivered them to Esch. Ruppolo told me he had purchased the lamps and delivered them to Esch. I continued to see them up until May at the same cafe. Altogether I gave them five or six orders for drugs. I ordered ten pounds of opium which was never delivered, one pound of opium, three orders of two pounds of heroin, three orders of two ounces of heroin, three or four orders of an ounce of heroin.

1 114

I do not know Vincent Carreria. I met Jimmy the Blond in 1937 in the early part of April, at the Central.

Cafe. Ruppolo was with Jimmy in the back room. The incident of 25 ounces of cocaine which I received occurred in March, 1937. I met Jimmy the Blond afterward.

Cross Examination by Mr. Drescher:

I was never convicted of any other crime besides my plea of guilty in this case.

When I had trouble with Al Mauro regarding payment or return of the can, I went to Jimmy Bruno. Bruno was respected in that neighborhood around Broome Street. I met him at the cafe, and I told him about the trouble I had with Mauro, and I asked him to help me out. He said he would try and help me. Then he told me to send somebody to Mauro, and I sent La Rosa up to Mauro.

I did not want to give Bruno a reward for helping me. He was one-third partner of the stuff I brought in. "Q. Do you know that of your own knowledge, Mr. Cellantano? A. All I know is what—is what Mauro told me." I never delivered merchandise to Bruno, and I never had any business with Bruno concerning the purchase or sale of narcotics.

Cross Examination by Mr. Solomon:

I did not know Agent Esch prior to my arrest in February, 1937. I was arrested by Agents Saver, MacDonald and Johnson for possession of narcotic drugs. This was in the latter part of February. I do not use drugs. I had these drugs for the purpose of sale to

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Michael Cellentano—for Government—Cross

others. I had been selling drugs for several years prior to February, 1937.

I met Mauro sometime in 1934 or 1935. I received some of my supply of drugs from Mauro. I did not get it from any other source. I received some drugs from Ignaro and Ruppolo. I received drugs from no other source. I have been engaged in the narcotic business since 1929. Prior to 1934 I received my drugs from Canada, I received no drugs from any of the defendants on trial here.

119

I had no dealings with Bruno personally about buying drugs. The same applies to Don Alphonso. I never spoke to Don Alphonso about drugs. I had no business dealings of any kind with Don Alphonso. I saw Don Alphonso at 380 Broome Street, and I saw many other people there.

120

When I was arrested by the agents in February, 1937, I was taken to 641 Washington Street, the office of Mr. Garland Williams. I saw Mr. Williams and had a conversation with him the following day. He made me no proposition. Major Williams introduced me to Agent Esch three weeks later. I was not placed under bail in that case.

Q. You did not plead guilty in that case, did you?

A. Yes.

Q. You pled guilty? Do you know what I mean, sir?

A. Well, I signed a statement.

Q. I did not ask you that.

The Court: No, were you arraigned in court? Were you brought before any judge or commissioner?

Michael Cellentano—for Government—Cross

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The Witness: No, just the grand jury.

Q. Were you indicted? A. Yes.

Q. Don't you know that you were not indicted? A. No, I don't.

Q. Don't you know that you were released on your own recognizance? A. Yes, I know that.

Q. Don't you know that you were not brought before a commissioner or a judge? A. I was brought before a commissioner.

Q. What commissioner? A. I don't know his name, 122
but I was brought before a commissioner.

Q. Where? A. In the court building.

Q. In what building? A. This building.

Q. Down in the basement? A. Yes.

Q. Did you give bail? A. No.

Q. Were you ever in court on that case? A. Not yet.

Q. Now, Mr. Cellantano, you were not indicted, were you?

I understood I pled guilty and I was indicted under the Harrison Act, when I was in front of the commissioner. I did not plead guilty before a judge of this Court in Room 318 or any other room in this building. When I was before the Commissioner I did not post a bond for my appearance. I was told to go home, and I walked right out of the building. I had no lawyer. 123

Major Williams introduced me to Esch, and told me who Esch was. Major Williams did not tell me that my freedom depended upon what I did with Esch. Major Williams told me what I was supposed to do with Esch.

Q. Didn't he tell you what you were supposed to do with him? A. He told me, yes. He didn't insinuate

Michael Cellentano—for Government—Cross

that my freedom—

Q. What did he say to you?

The Court: One moment. Suppose you let the witness answer.

Q. Did you answer, Mr. Witness? A. No.

Q. Finish your answer, please. I did not mean to interrupt you. A. I thought I was indicted and I pled guilty to it.

Q. You thought? A. Yes, and I told Major Williams that I would help him to break up this here smuggling ring, this narcotic ring, so he said, "Is there any man in this office you want to help you?" I said, "No". Then he introduced me to Esch. He called me—he asked me would Esch do and I said yes.

I told Major Williams I would help him break up the smuggling ring in which I was. Mauro was one of the persons with whom I smuggled merchandise into this country. There was no one else. Mauro and I were part of the ring that was smuggling merchandise. I did not tell Garland Williams that I would break the ring up. I told him I would go so far as I could, and from there on he would have to go it himself.

Mauro and I were not partners. We only brought in merchandise on that one shipment from Montreal, Canada. We did not bring in anything from any European country. The ring I mentioned before was between myself and Mauro, and other connections that I knew nothing of. The only one I knew at that time was Mauro.

I told Garland Williams that Mauro and I had imported narcotics. Outside of Mauro and myself, I knew about no others. I started working with Esch. I did

not introduce Esch to Mauro, but I did introduce Esch to Ruppolo and Ignaro. As far as I know, Esch did not meet Mauro. I don't know whether Esch met anybody else outside of Ruppolo and Ignaro. At no time did Esch and I have a conversation with any of the defendants in this court room. I never bought any narcotics from the defendants in this court room. I never saw Esch buy any narcotics from them. When I was arrested I was living at 118 West 72nd Street, the Hotel Barclay. I was living with Charles Rivera, who was also known as Dominick La Presta. La Presta was not arrested with me. He was my partner. We both dealt in narcotics.

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Q. Who else was a partner of yours in this narcotic ring? A. When?

Q. At any time from 1929 on. A. I don't have to answer that, I don't think.

Mr. Solomon: May I ask your Honor to direct the witness to answer the question?

The Court: You have to answer it.

Q. Don't you want to answer it? A. Yes, I can answer it. I had no partner.

Q. From 1929 on during the several years you mentioned you had no partners? A. No.

Q. But you did not want to answer the question, is that right? A. That is right.

129

Nobody else lived with me at the Hotel Barclay besides La Presta. Mauro did not live in the hotel. La Presta and I shared the same room in the hotel. We paid for the room share and share, and we ate together

130

Michael Cellentano—for Government—Cross

most of the time. I did not turn La Presta in to the government. Although I promised Garland Williams to break up the narcotic ring, I did not turn La Presta in for dealing in narcotics, because he was my friend.

I began to work with Esch in March, 1937, until May, 1937. I received nothing for my work, but I did get some expenses.

Q. How much did you get? A. None of your business.

131

Mr. Solomon: I ask, your Honor, that this witness be admonished to treat counsel with courtesy.

The Court: Yes. Do not use any language like that here. You answer the question.

I received \$5.00 a day. I received nothing else that I can remember. I was not promised any money for testifying in this case. After February, 1937, while I was helping the government, I did not sell any stuff on the side. I don't know whether La Presta was selling any stuff. I had moved away and I did not live with La Presta. When I purchased merchandise I always knew in advance to whom I was going to sell.

132

Q. When you bought merchandise in February, when you had this merchandise in your possession in February, 1937, did you know whom you were going to sell that to? A. I didn't have any in—in 1937.

Q. 1937, when you were arrested? A. Yes.

Q. Did you know whom you were going to sell it to? A. Yes.

Q. To whom? A. Several people.

I did not give the names of these people to Mr. Esch, because I was not selling them any more. When I met Esch I was not selling any more stuff. I had narcotics

in my possession when I was arrested for the purpose of selling. The man to whom I was going to sell was named Swanson in Florida. There were two other people. I don't remember their names. I had met Swanson a long time ago prior to 1936. That man you indicate (Esch) is not the man I knew under the name of Swanson. I first became acquainted with Mr. Esch as Swanson in March, 1937. That is not the same Swanson I knew in the South. Swanson's address was Orlando, Florida. I had transactions with him prior to that time in which I sent stuff to him by Railway Express. 134

I made purchases from Mauro, Ignaro and Ruppolo at different times on different occasions. Each time I got in touch with one of them. We had no previous understanding as to when I would make another buy.

I saw Mr. Swanson, meaning Mr. Esch, at his hotel in New York where I knew him under the name of Swanson. I knew he was not the same Swanson as in Orlando, because I had met the other Swanson of Orlando personally. The Orlando Swanson was a tall slim man. He was not a user. I had seen him in New York. I don't know where he is now. I don't know whether he bought dope, although he told me so. 135

I stopped at the Cornish Arms and the Willard Hotels in which Mr. Esch, known as Swanson, stopped. I never brought Mauro to these places, but I did bring Ruppolo. Ignaro had been to the Willard several times, but never to the Cornish Arms. The other people who were with Mr. Esch at the Cornish Arms and the Willard were Boysa, La Rosa and Danny Spears. None of the defendants on trial were there. I was present at the time Mr. Esch gave \$375 for nothing. I did not

136 *Michael Cellentano—for Government—Cross*

know that he would receive no merchandise for the money. La Rosa did not take me into his confidence. The last time I saw Mauro was April, 1937. I saw him since upstairs in the witness room. I also saw him Friday, and I saw him every day since last Monday. I never spoke to him. I did not ask him what he was going to testify to.

137 *Cross Examination by Mr. Edelstein:*

I was engaged on and off in selling dope from October, 1935 until the time I was arrested. I was engaged in business for my own profit, for what I could get out of it. I was arrested in February, and after a conversation with one of the agents, I decided to help them obtain other violators. I was engaged in business until I was arrested, but after I was arrested I decided to quit. I did quit. After I had a talk with Major Williams, I decided to make more purchases at the request of the government agents. I was supposed to introduce Esch, and Esch would do the buying. I was present sometimes when he did buying. At the time I introduced Esch to other people, I knew it was for the purpose of enabling Esch to make purchases. These were new transactions long after I was arrested. The new purchases had nothing to do with the crime I had already committed.

I brought stuff in from Canada by train, and was helped by a certain porter. I took the train from Canada to Boston, and then from Boston to New York. I did not expect any consideration for my testimony.

In 1929 and up to February, 1937, I was engaged in the narcotic business and bootlegging. This way my

Michael Cellentano—for Government—Cross—Redirect

means of livelihood. After I was arrested I got a change of heart and wanted to help society. I did it in the interests of society. I was not promised any consideration, and I don't expect any.

Since my arrest I have been employed as a bartender in New York City. I also received money from the Narcotic Division up until May, 1937. I don't know exactly how much I received, but it was a few hundred dollars. I remained in the city during that period since May of 1937, up to the present time. I work every day in the week as a bartender. I saw representatives of the Narcotic Division three or four times during the period from May, 1937 up to the present time. I received no money from them as an informer. I have been working continuously since December 1st, 1937. From May until December, 1937, I was gambling. When I was finished with the narcotic agents, I had a few thousand dollars which I had made previous to the time of my trouble. I don't have the money in the bank. I carry it in my pockets.

Cross Examination by Mr. Drescher:

I speak and understand Italian.

Redirect Examination by Mr. Martin:

When I said bootlegging I meant bootlegging of alcohol and whiskey. I was arrested two weeks before La Presta was arrested. That was at the same hotel I had been living at. He had moved out and then he moved back. I was not in communication with him during those two weeks.

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Al Mauro—for Government—Direct

By the Court: Is the person referred to by the witness as La Presta named in this indictment by any other name?

Mr. Martin: No, sir, except he may be included within that class of other persons whose names are unknown.

The Court: Very well.

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AL MAURO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My real name is Romeo Montana. I pleaded guilty to the present indictment which charges me with conspiracy to violate the narcotic laws. I know the defendants on trial, Jerry Bruno, Alphonse Manzana and Willie Ross.

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Witness identifies Jerry Bruno as Jerry Bruno, and Don Alphonso as Alphonse Manzana. Does not see Willie Ross in court.

I know Don Alphonso for seven or eight years. I don't know whether Manzana is a family name. I first knew him as a friend when he owned a cafe at 380 Broome Street. In the winter of 1936, we first entered business together. The business was handling narcotics. Jerry Bruno and Willie Ross were also in the organization. I first had a conversation with Willie Ross in relation to narcotics in the cafe at 380 Broome Street while we were playing cards. The following evening Willie Ross, Jerry Bruno, Alphonse Manzana and I had a conversation to start the business in the back of

Al Mauro—for Government—Direct

380 Broome Street. Manzana bought some stuff and gave it to us, and Willie Ross and I were to sell it to other people. This stuff is narcotics. I called the stuff C, H and M. C stands for cocaine, M stands for morphine. I don't remember what H stands for. H is a powder which is white, pink and other colors. Alphonse said he had bought some, and that any time we wanted it, he would give it to us.

I had a conversation with Willie Ross, and he told me that Alphonse Manzana got the stuff on the boat. A man brought it to him from Europe. Willie Ross used to see the sailor, and talked to the sailor. I never spoke to the sailor, but I saw Willie Ross speaking to him.

In the conversation I had with Don Alphonso, he said that any time we ran short of stuff, he would get all we wanted. Nothing was mentioned about the price. Willie Ross was present, and he said to me that whatever we got we would sell together. Bruno was present at some of the conversations. Nothing was said about payment. We used to split the money. We would balance the book. The profit was split between the four of us. Willie Ross kept the book. We were partners for seven or eight months. We used to sell a kilo, 35 ounces a month. We sold H and M.

We used to sell one or two pieces every day. A piece is an ounce. We used to sell a few pieces of opium. A piece of opium is a pound. We kept the drugs in a cellar at 380 Broome Street. Alphonse used to bring it down the basement. Sometimes Manzana gave us the drugs and I took it down the basement. The first time I received a drug from Alphonse Manzana was early in the winter time, 1936. It was two or three days after the second conversation between the four of us. Man-

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Al Mauro—for Government—Direct

zana gave us a half a kilo of H. We made one ounce pieces of it. Alphonse, Willie Ross and I were present. Willie Ross and I removed it from the basement. The stuff was there that night, and the next day I started to sell it. I took it out the first time. The customer is not in court.

149

Before we finished a half kilo, we used to get more and put it down there. Alphonse Manzana gave us the stuff to put down the basement. I never got any stuff from anybody else to put in the basement. I do not know any of the people who I sold it to. The only one of the defendants who bought from me was Ralph Liguorio, who bought a couple of pieces.

Witness identifies Liguorio.

I know nobody else sitting there besides Don Alphonso and Mr. Bruno.

150

The first time I saw Liguorio was two months after we started in business. Willie Ross introduced him to me and said, "Ralph Liguorio wants two pieces of stuff". I gave it to him. I don't remember what he paid for it. A week later he came in and bought two more pieces. Only Willie Ross was there. He never came again. I never spoke to him much. Willie Ross talked to him. On both times he bought H.

Don Alphonso and Jerry Bruno did not do anything with the drug from the time I bought it until I resold it. Willie Ross and I did all the work. We used to put the stuff in an envelope, put it away, and deliver it when the customers came. The drug was in the same condition when I resold it as at the time when I bought it. Sometimes we put in powdered sugar to make more stuff out of it. Willie Ross added the sugar.

I know a man named Diamond Dick, who is Dominick Di. Marso. I never had a conversation with him about drugs. I have known Mike Cellantano for a couple of years. I had business relations concerning narcotics with him beginning in the early part of 1937, and lasting a few months. I sold him a few pieces of H. I got the drug from Harry Kuck. I never sold Mike Cellantano drugs which I bought from any of the defendants on trial. I spoke to Don Alphonso and Willie Ross about selling drugs to Mike Cellantano. This was in 1936. I said to Don Alphonso, "Mike Cellantano wants a couple of pieces of stuff". Alphonso said to give it to him. I got the stuff from the cellar and gave it to him. Cellantano first bought two or three pieces of opium about two weeks later. I got the stuff from the basement, and gave it to him. All the drugs in the basement as far as I know were brought there by Alphonse Manzano. 152

I received some drugs from Mike Cellantano late in 1936 around Christmas. He came and brought some stuff from Canada. He brought 170 pieces of cocaine and 12 pounds of opium. Before Cellantano came with the drugs, he called me on the telephone, and said he would be there with the stuff a couple of days later. When he called me on the telephone, I said, "I don't want no part of you. You lie too much", and I hung up the receiver. Three days later he came to my house. He told me to keep the stuff, and I said I did not want to. I told him to keep it himself. He asked me to put it some place for him, and I did. I put it on the roof of my house. He took some of the stuff, and some of the stuff I sold. He took six pieces of opium and 25 pieces of cocaine which I gave to him personally. I did not deliver any part of those drugs to any other defendant. 153

I had a conversation with Jimmy the Blond concern-

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Al Mauro—for Government—Direct

ing these drugs. I sold 25 pieces to Jimmy the Blond. I do not know Jimmy the Blond's correct name. I knew him for only a short time, having met him in his cafe at 141 Mulberry Street. I spoke to no one else and no one else spoke to me concerning these drugs. Jimmy the Blond sold the 25 pieces of cocaine to an agent through Louis the Bum. I don't know his second name. I have spoken to none of the other defendants about any other defendants in this indictment.

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"Louis the Bum" is designated in this indictment as Louis Ruppolo. At that time I didn't know his name was Ruppolo.

I did not speak to any of the defendants on trial about the drugs that Cellentano delivered to me.

156

Mike Cellentano telephoned me, and he said he wanted some money or the stuff. I said, "I will give you 25". Cellentano said, "I will send Diamond Dick down, and you give him 25 pieces". I gave Diamond Dick the 25 pieces. Jerry Bruno told me that he had spoken to Cellentano, and he wanted me to give Cellentano 25 pieces of stuff. The stuff was cocaine.

I had previously told Bruno about the cocaine. I did not give Bruno any part or interest in it. That is all Bruno said to me. I was not present when Cellentano spoken to Bruno. Bruno told me he had spoken to Cellentano, and Bruno said to me, "Give me some of the stuff and his money". I gave Cellentano the stuff.

By the Court:

I gave it to Celli three or four months after I got the stuff. I had it in my house. I got it from Mike.

Al Mauro—for Government—Cross.

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Cellentano. That is the stuff Cellentano brought from Canada, and before I gave it back, somebody told me to do so.

By Mr. Martin:

This (Ex. 9 in evidence) is the can with 25 pieces of cocaine which I gave to Mike Cellentano. I had business relationships with Cellentano before he delivered the can to me. Before he delivered the can to me, he telephoned me and said he had some stuff, and I cut him off, saying, "I don't believe you, Mike. You have been lying to me plenty. I don't believe you". When he came over to my house with the stuff, I had a good talk with him. He came to my house. We shut ourselves up in the kitchen, and we counted the stuff. Then I put the stuff away. We then ate and he remained in my house until the night time. He then went away.

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He told me how he got the stuff in Canada. He said he got the stuff by swindling somebody. We did not talk about the sale. He said that what he could not sell, I could sell. He said he knew a lot of places, and he would sell it. I did not pay Cellentano any money at the time he delivered the stuff. He owed me about \$250.00.

159

Out of these drugs I sold 25 ounces to Jimmy the Blond. 25 ounces I gave to Diamond Dick to deliver to Cellentano.

Cross Examination by Mr. Solomon:

My true name is Romeo Montana. I am also known as Al Mauro. I have no other name. I am not known

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Al Mauro—for Government—Cross

as "Scarface Al Capone". I never told the District Attorney that I used that name. Nobody I ever was associated with called me by that name.

I was born in Italy and came to this country in 1912. I am not a citizen. I am married, and live with my wife at 1759—75th Street, Brooklyn.

161

I used to have a pool room. I had about three or four places. Then I had a trucking business, and then I went into the taxicab business. All these businesses were in my name.

I was never convicted of a crime. I pleaded guilty in this case the other day when the trial started.

162

About two months ago I called Mr. Martin on the telephone. Nobody asked me to call Mr. Martin. I did so of my own free will. I told Mr. Martin I wanted to talk to him. Mr. Martin said, "If you want to talk, talk to Major Williams." I went to Major Williams. This was sometime before Christmas, 1937. Christmas is in January. Easter is in April. I went to Mr. Williams' office in Church Street. I had a talk with Mr. Williams. Mr. Williams did not tell me that unless I did what he wanted, I would go to jail for a long time. I told him I wanted to be a witness in this case. I told him all I knew about the case. I told him I knew Jerry Bruno, Don Alphonso, Willie Ross and Mike Cellentano. I told him I kept narcotics in my house, and that I began dealing in narcotics in 1936, in the winter time.

I began dealing in narcotics early in winter, at the end of summer. I first spoke to Willie Ross in about 1936, but I don't remember the date. When I went into business in 1936, I did not go alone. The four of us went in. Before I went into the narcotics business, I was un-

employed. I was not on relief.

I was living on 72nd Avenue, Brooklyn, in a two-family house. I had five rooms. My wife and I have no bank account. I have no children working. I paid \$30 a month rent. I paid the rent with some money I had, and before that I was working with my brother in the trucking business.

My brother's name is Albert Montana. I was out of work for six months. My salary in the trucking business was \$25 per week. I have no children. I had a phone for about 2 months and I closed it because I could not afford it. I paid my gas bills. The gas was not shut down. I paid my rent. I had an automobile, Pontiac, 1937. In 1936 I had a 1935 Plymouth. I bought the Plymouth in 1935 for \$600. It was a new car which I bought on time. I bought the Pontiac in 1937. I am not working now. I did not work in 1937. I was in the narcotic business. I bought the Plymouth in my wife's name on the installment plan.

164₁

I have not got Cellentano's car. I have Cellentano's dog in my house. Cellentano owed me some money, and I sold the car for him. I lent him \$200 in 1936 when he bought the car. I had the cash on my person. I have no check account, and I have not one now. I still have Cellentano's dog.

165₁

I don't remember when Cellentano telephoned me from Canada. He told me he was talking from Canada. It was about 9:00 o'clock in the morning when he called. I answered the phone. He spoke to me in Italian. He said, "I am coming over. I have a package full of narcotics." I said, "Mike, I don't believe you", and I shut the telephone on him. I had no other transactions

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Al Mauro—for Government—Cross

with him, but he lied to me. In my dealings with him I found him to be a liar. I was not afraid to deal in narcotics.

167

Willie Ross gave me the idea of going into the narcotic business, when I stayed around the neighborhood. He asked me if I wanted to go into the narcotic business. I said, "I don't understand the business." He said he understood the business, and he would teach me. I knew it was against the law to go into that business, but I went into it with Willie Ross. I had no money to put into the partnership. Neither did Willie Ross have any money. We bought the narcotics on credit from Alphonse Manzana. I had no customers at the time Willie Ross made the proposal. I knew nothing about the business. I got the first bit of narcotics at the end of the summer. It may have been March or April, 1936. I am not sure.

168

After I got through talking with Willie Ross, he approached Don Alphonso. I was not present and don't know what they said. After that the four of us got together, and made up our minds to do business. This was the day after in the cafe at 380 Broome Street, where I used to play cards. I didn't refuse to go into the business although I knew it was bad. Jerry Bruno was the other partner. Jerry Bruno was present the day after when we all got together. I put up no money. Don Alphonso gave the four of us the narcotics on credit.

I made no sales. I was just handling the stuff. When customers came I used to give them the stuff. I did not know the names of the customers. I never asked names. I would know them if I saw them. I never saw Mr. Esch before. I saw him, but I never dealt with him. The

first time I saw Mr. Esch was in court over here. I did not see him in Williams' office. I did not see him in any hotel room. Jerry did not introduce him to me. The only one sitting here to whom I sold is Ralph Liguorio. I am sure of that. I sold him two pieces on two occasions. I don't remember how much money he gave me. I sold him H. That is heroin. I never used it. I don't use dope and I don't smoke a pipe. Before Willie Ross made me the proposition, I knew him for two or three years around the neighborhood. I never had any business with him.

170 4

I knew Don Alphonso before that for about seven or eight years. I never had any business with him. I was not surprised when Willie Ross made me the proposition. We just got together and started to talk. If somebody made me a proposition to stick up a bank, maybe I would have done it. Who knows? I would not commit a murder. I would stop at that. I never owned a house of prostitution. My brother and I were not in partnership to run a house of prostitution. We never ran a gambling joint. We never had a trucking business which was a racket.

171 5

The day after Willie Ross spoke to me, we got together in the back of the cafe, and we settled ourselves to start to wait. Cellentano came to my house from Canada before Christmas, 1936. It was two or three days before Christmas.

I sold narcotics to the man now standing in the court room, Ralph Liguorio, at 380 Broome Street. Liguorio spoke to Willie Ross, and Ross told me to give him two pieces of stuff. That was the first time. The second time he came over a week later at the same place, and got 2 more pieces. This happened in 1936 after I

1 172

Al Mauro—for Government—Cross

went into the narcotic business. Prior to that time, when I spoke to Willie Ross, I was not in the narcotic business.

Two or three days before Christmas, Celli came to my home. On that day he did not telephone me before coming up. He had a valise with him at the time. When he came up he said, "I got stuff in the valise." I said, "Open it up. Let me see".

1 173

At that time I knew Celli for about three or four months. That was after March or April, 1936. Somebody brought him down to Broome Street, and introduced Celli to us. Prior to the time he came to my house, I had some business dealings with him. He bought two pieces of H once, and a few pieces of opium before. That was before Christmas. The first deal I had with him was about two pieces of H, and then three pounds of opium. He paid him \$30 an ounce for the H, and \$50.00 a pound for the opium. I received \$150 for the opium, and \$60 for the H. Willie Ross received all of the money.

174

Willie Ross used to get the money, and we used to share anything that week. Willie Ross kept a small book. I can't read English. I sometimes looked in the book, but I did not see the names of any customers in the book. I saw the money written down in the book. Willie Ross bought the book when the business was started. It was a small book, about 4 x 6. He carried it around with him sometimes, and sometimes it was in the place. Willie Ross wrote how much dope he gave me, and how much money we returned. I never wrote it. We used to split every week a few dollars, and at the end of the month we used to divide up whatever there was. The other men were present when we made

the split.

Celli brought 175 pieces of cocaine and 12 pieces of opium to my house.

I was arrested on May 26, 1937. Robert W. Artis arrested me at my home. He searched my home, and took me to my mother's house. He searched my mother's house when I was arrested. I did not tell Artis about Jerry Bruno, Don Alphonso or the cellar at 380 Broome Street. I did not tell him that I met Willie Ross at 380 Broome Street. When I was arrested, he said I was charged with violating the narcotic laws. He took me first to the station house in Brooklyn, and then upstairs in this building. They did not talk to me in Garland Williams' office. I was held under \$7500 bail.

176 4

My lawyer at the time was Shapiro. After I was discharged my lawyer was Zelenko. I had no other lawyer. I did not discharge my lawyers because they told me that my case could not be fixed. After I was out on bail, I did not go to Martin and Garland Williams, and tell them my story. It was eight or nine months after I was arrested that I went to Mr. Garland Williams' office and confessed all that I knew to him. I did not sign any paper. I just spoke to Garland Williams. Mr. Williams did not ask me why I came up to him. I only mentioned the names of Alphonso, Bruno, Ross and Liguorio. I did not mention Celli's name. I went to Mr. Garland Williams and told him the truth, but I did not mention Mr. Celli's name. I had no reasons not to mention his name. They already knew his name, because Celli got pinched, and told them about me. I did not have to tell them about Celli.

177 5

When they arrested me, they found no stuff on me, or in my home. I saw Celli since this case has

been on trial, but I didn't speak to him. Nobody ever went over the story with me before I took the stand. I have been in this building in this case all week long. I only saw Mr. Williams the day I went up to confess to him. I have not met him since. I have not spoken to Mr. Martin since that day. Nobody went over this case with me or discussed it with me. I don't know anything about Mr. Esch, otherwise known as Dr. Swanson.

I found out Celli caused my arrest when I was pinched. I did not go to Celli, and I was not angry at him.

I told Mr. Williams where the four of us kept the stuff at 380 Broome Street. I did not go with any agents to 380 Broome Street. The cellar of 380 Broome Street is a large one. You get into the cellar through the stairway in the back. It was open all the time. I went down there everytime I had to get some stuff. There was about a half kilo of stuff in the basement at a time. Sometimes I put the stuff there, and sometimes they used to put it there.

Don Alphonso had a conversation with Celli when I was partners with Alphonse in 1936. The partnership terminated at the end of 1936. Celli came in the store and bought some stuff. I did not see Celli give Alphonse anything, or Alphonse give Celli anything. Other people used to come besides Celli. They would sit there all day long. I sometimes spoke to some of the people whom I knew. I can tell the difference between morphine, heroin and cocaine by looking at it. This package which Mr. Martin showed me yesterday contains opium, and is the one I gave to Celli. I saw a few of those cans. They all look alike. I gave

Celli a can like that, but it might be a different one.

Cross Examination by Mr. Drescher:

I have not spoken to anybody about this case since yesterday. My best recollection as to the time I went into business with Willie Ross and Alphonse is the beginning of the winter, 1936. I don't remember the month.

I received a call from Canada around this time in 1936. I was associated with the persons I mentioned for a period of about seven months. It was around 7 months, I cannot say exactly. When I got the call from Canada, I had separated from those people for about two weeks.

Bruno had no interest in the stuff that Celli brought me from Canada. I handled that merchandise on my own account. I never was a partner of Celli. I just held the stuff for him. When Celli was over at 380 Broome Street, Bruno, Alphonse and Ross were sometimes there. 380 Broome Street is a cafe where people eat and drink.

The call I got from Canada was before Christmas, 1936. At the time I got the call from Celli, I told him he lied too much, and I hung up on him. Yesterday my testimony as to the conversation with Celli was complete. I have nothing to add. I never told Celli that Bruno had a third interest in the stuff that came from Canada. Jerry Bruno did not have a third interest in it.

I never was in a smuggling ring with Celli. I never had anything to do with Celli, except this Can-

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adian stuff.

185

I did not speak much with Jerry Bruno. Jerry Bruno never gave me any stuff. I never gave him any stuff. I was arrested May 26, 1937. I don't know when Alphonse and Bruno were arrested. I never spoke to anybody about the pieces that came from Canada. I sold 25 pieces to a defendant by the name of Jimmy the Blond. Those same 25 pieces, through Louis Ruppolo, went to Mr. Esch, the agent. I never spoke about drugs to Diamond Dick. I never had any dealings with Diamond Dick, except when Celli sent Diamond Dick to get the 25 pieces.

I never received a phone call from Bruno about this stuff, after I got it from Canada.

Celli came to my home and brought the stuff, and left it with me. I put the stuff up on the roof. I had a conversation with him. We did not discuss price that evening.

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At the time we were partners I gave Jerry Bruno money. I did not turn moneys over to Willie Ross all the time.

Cross Examination by Mr. Kaplan:

I don't remember the month I went into business with the other men in 1936. I was a partner for six or seven months, but I don't remember the exact time when I went into partnership. There was no one else in the partnership except Bruno, Ross, Alphonse and myself. We four were interested in seeing how much money we could make from narcotics. Nobody else was to get a split beside ourselves. Liguorio was no part of the combination. I went to Major Williams

Al Mauro—for Government—Cross

1873

office about two months ago. It was the end of 1937, about December. It was after I had been arrested, and was out on bond. I went there voluntarily.

I mentioned four names to Major Williams. The names were those of my three partners and also Ralph Liguorio. I did not know the names of any of the other customers. I made deliveries to customers, but I do not remember how many customers, but I remember Ralph Liguorio. I never spoke to him. Willie Ross told me his name at the time I gave Liguorio the stuff. I gave him the stuff in the winter time. I don't remember when. I told Major Williams. I spoke to Major Williams and told him Liguorio came there in the winter time. I don't think I gave him the date January 22, 1937. I just told him it was winter time, 1936.

1884

I have not seen this indictment. I did not discuss the subject of this indictment with anybody. I don't know whether the indictment had been filed when I spoke to Major Williams. I just told him what I knew. I don't know what he did. When I went to see Major Williams, I had already been indicted.

1893

I started the partnership at the beginning of the summer, or the end of the summer. I don't remember the month. I remember the year, but I don't remember the month. I have a good memory. I don't know what the letter H means. I forgot the word. I remember Ralph Liguorio's name, but I don't remember what year I went into partnership. He bought the stuff from us when we were partners, but I can't remember the date. He used to come in any time. He came on two occasions. I don't remember the date of the last time, but I remember his face and his name.

I did not mention his name to anybody, and nobody mentioned his name to me since I went to Major Williams' office. His name was not suggested to me by anybody. I did not see a picture of his anywhere. Nobody showed me a picture of his. I did not speak to anybody about the case, except Major Williams. I spoke to Major Williams two months ago. That was the only talk I had with him. I spoke to him a couple of hours. There was nobody else present. Major Williams wrote everything down himself. I did not read what he wrote. He did not read it to me. He did not ask me whether what he had there was correct. I have not had any contact with anybody since then about this case.

I was in this Court room a week ago last Monday. I received a subpoena to come to court. I came over and saw Mr. Martin, but I did not speak to him. I did not tell Mr. Martin what I was going to testify to, or anyone else connected with the United States Government, or the prosecution of this case.

I did not tell Celli what I was going to testify to. I never spoke to him.—I did not ask the Government whether they would refrain from deporting me if I testified in the case. I do not know what they are going to do with me. I hope they will be lenient with me. I did not go to Major Williams' office because I had that thought in mind. I went to Major Williams' office because I wanted to serve society as a respectable citizen.

Before I went into the narcotic business, I was in the trucking business, for five or six years. I worked for my brother and got \$25.00 a week. Before that I had a taxicab, and I had pool rooms at 171 Mulberry Street, 139 Mulberry Street, 121 Mulberry Street.

Al Mauro—for Government—Cross—Redirect

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Between January and March, 1936, I was unemployed. Between March and June, 1936, I was with them. I can't remember the date. I don't remember if it was after March or before June. I don't remember the month. My birthday is in July. I don't remember whether it was before my birthday.

Celli lied to me that day. Then he made his word good before he brought it over. I never lied to him. I don't think I ever lied to anybody. I never lied in my life. I would not lie even if my freedom depended on it.

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Cross Examination by Mr. Shapiro:

I received 170 pieces from Mike Celli after I came back from Canada. I never returned the 170 pieces to Mike in bulk or in a package.

Redirect Examination by Mr. Martin:

195

I don't remember whether Willie Ross or Don Alphonso or Jerry Bruno was arrested when I first telephoned Mr. Martin, and went over to see Major Williams. I don't know whether anybody in this case was arrested at that time. I knew Liguorio had been indicted at that time.

I sold 25 ounces of Celli's stuff to a man named Jimmy the Blond. I also gave 25 ounces to Diamond Dick to give to Celli. I didn't have a conversation with any of the defendants before I gave the 25 ounces to Diamond Dick. I knew Celli wanted the 25 ounces because he called me up. He called me and wanted some

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money. I said, "I have no money". He said, "I spoke to Jerry Bruno, and he told me you could give me 25 pieces". I said, "If you spoke to Jerry Bruno and he told you to get the 25 pieces, I will give it to you". I then saw Jerry Bruno, and he says, "Why don't you give him the 25 pieces?" so I gave it to him. I spoke to Jerry Bruno on Kenmare and Mulberry Streets. I gave the 25 ounces to Diamond Dick a few days later. Nobody, not even my lawyers, told me I could be deported on this charge. They told me I can't be deported.

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By the Court:

I received a telephone call from Canada around Christmas day, 1936. I had broken the partnership a couple of weeks before. At the time I had this talk with Celli, I was no longer in partnership with the three persons I mentioned. The partnership arrangement began six or seven months before December, 1936.

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LOUIS RUPPOLO, called as a witness on behalf of the Government, being duly sworn, testifies as follows:

I don't want to give my address:

The Court: All right.

Direct Examination by Mr. Martin:

I am one of the defendants named in this indictment, and I have entered a plea of guilty to it. I am acquainted with a number of the other people named in the indictment. I will try to give their names by

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memory without looking in the indictment. They are: Ralph Liguorio, Lucien Ignaro, Al Mauro, Angelina Colognia, Louis Colognia, Big Nose Charlie, Charlie La Gaipa, Nicholas Gentile, Tony Lima, Vincent Carriera, Felix Papa, Willie Ross, Little Joe, Big Nose Louis, Louis Liguorio. I know all those persons personally. I also know Boysa.

I first became acquainted with Ralph Liguorio.

Witness identifies Liguorio.

I met Liguorio around November or December, 1935 at the Central Bar & Grill, 55th Street and 8th Avenue, New York City. I knew him. We were kids together from the same neighborhood. I had business dealings with Liguorio in December, 1935. That was the last transaction I had with him. It involved 100 pounds of gum opium.

200

By the Court:

I had a conversation with Liguorio in December, 1935, at the corner of 55th Street and 8th Avenue. Ignaro, I and Ralph were present. Liguorio asked me if I wanted to take a ride. I said yes. Liguorio and I got in the car, and we rode to 380 Broome Street, Manhattan. Liguorio got out and went into 380 Broome Street. I remained in the car. He was in the premises about twenty-five minutes. I could see him in the premises. He came out with Al Mauro, "Scarface Al", "the boss". I don't know who the last witness was in this case. I saw Al Mauro in the Court room during the past week. This is the same Al Mauro who came out of 380 Broome Street.

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Liguorio got into the car and we drove away. Liguorio

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then said to me, "You see how people trust me!" and he showed me a bundle of money. I said, "That is a lot of money. How much is it? He said, "It is \$3000. You see how people trust me with money? You know Al Mauro is the boss of this neighborhood, with Don Alphonso", and stuff like that. I said, "Where are we going?" He said, "I am going to buy some junk. Why don't you get into that business?" I said, "I don't understand anything about that business". He said, "Well, you are foolish. You will be rich over night". Later on he said, "I will take you in as my partner".

We were going to Brooklyn in the car. That is all the conversation we had. We got to Brooklyn around First Place and Court Street. Liguorio stopped the car, and blew his horn. Ignaro came out with a man. Ignaro later introduced him to me at the corner of 55th Street as John Capperio.

By Mr. Martin:

When Liguorio blew his horn, Ignaro and Caputo were inside Ignaro's house. They came out. Ignaro asked Liguorio for the money, and Liguorio said that the people downtown said the stuff was too dear. Ignaro said, "Well, John (meaning the other man) won't give it to you any cheaper". Liguorio said, "We will ask him". Ignaro then went over to Caputo and said something. Caputo said, "Tell that bum to get out of here. If he wants that stuff cheaper, chase him out of here." Ignaro came over to the car, and said, "Did you hear what he said." Ignaro said, "I heard it. All right. There is the money". Liguorio gave him all of the money. Ignaro said, "Wait for me at the same place for the pick-up car". Liguorio and I drove to President and Fourth Avenue, near a candy store and

subway station. We waited 45 minutes. A Ford Roadster with red wheels came along, and Liguorio said, "Get out. That is the pick-up car to get the junk. You walk towards the bridge towards 9th Street, and I will pick you up later". I walked towards 9th Street. Liguorio drove away, and he came back in about five minutes, and picked me up. Liguorio said, "Get in, but open the window and put the package on your lap." He said, "If I tell you to throw the package away, throw it." I said, "All right. What is this?" He said, "That is the stuff, the junk." I said, "I would like to see how junk looks." He said, "Open the package and look at it." I opened the package which I call a brick. It is in red paper and it has an elephant on it.

We then drove to 380 Broome Street. He went into the cafe, and I remained in the car with a package on my lap. Liguorio came out with a tall thin man, whom I don't know, and said, "Louis, hand the paper." I handed the package to this man, and he went into the house next door, also 380 Broome Street. Liguorio said, "I will be right out in a few minutes. He went into the restaurant while I waited in the car. I could see inside the restaurant from the outside. I saw Al Mauro and three or four other people. I did not know who they were at that time. After about a half hour, Liguorio came out and asked if I was hungry. I said, "Yes", and he drove me to a restaurant on Mott and Boyer Streets.

He spread a lot of money out on the table in the restaurant, and counted it. I said, "Where are we going?" He said, "We are going for fifty pounds more." After we finished eating, we went back to First Place and Court Street. He blew his horn, and Caputo and Ignaro came out. Liguorio gave Ignaro the money, and

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he said, "Go to the same place." We went back to President Street, and waited about an hour. The Ford Roadster drew up. Ralph Liguorio told me to walk towards the bridge on Fourth Avenue and Ninth Street, and he drove away. He came back about three or four minutes later. I got in the car and he told me to leave the window open again, and to put the package on my lap. We went back to 380 Broome Street. Liguorio went in again and came out with the tall thin man. Liguorio told me to give him the package, which I did, and he took it into the house. Liguorio went into the cafe, and I waited there for about an hour,

1 209

Liguorio came out of the restaurant, and we drove to 55th Street and 8th Avenue. Ralph told me while driving that he would put me into the business, and that he only made a few hundred on this deal, and that Ignaro made a few hundred. When we got to 55th Street, Ignaro asked Liguorio for \$3. Liguorio gave him \$2, and they said, "Thanks for taking the ride, Louis. Here is \$5." I did not see Liguorio any more.

1 210

I had no further conversations with Liguorio about drugs. After I had this experience with Liguorio, I was introduced to Jimmy the Blond in 1935. This was about a week after. I was introduced to him at 141 Mulberry Street, by a man named Little George. I later knew him as Vincent Carreria. There was also present man named Felix Papa. I asked Jimmy the Blond for some money, and he gave me \$25 or \$30 at \$3 a week. I made the payments and was getting friendly with Jimmy the Blond and Papa.

At the same time I was hanging out at 55th Street and 8th Avenue, I became very friendly with Ignaro.

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I also borrowed money several times from Jimmy the Blond, and always paid him. On February 25, 1936, I borrowed 48 for \$60 at \$6 a week. Jimmy the Blond, asked me if I wanted to go to work for him at 55th Street and 8th Avenue, and I agreed. I went in business with him on a 50 per cent basis at 55th Street and 8th Avenue. I did business at 55th Street and 8th Avenue, and started hanging around with Ignaro. He also borrowed money sometimes.

I was in business for Jimmy the Blond at 8th Avenue and 55th Street for about seven months. Then I went into business myself until I was arrested. During the seven months I was working for Jimmy the Blond, I did not become associated with anybody else. I met other people through Jimmy the Blond. I did not meet any of the defendants before I went into the narcotic business. I first started in to the narcotic business in January, 1937. The first narcotic transaction that I witnessed was for 100 pounds of gum opium. We went to buy it on January 18th, 1937. Jimmy the Blond was with me. We were four partners, Jimmy the Blond, Felix Papa, Lucien Ignaro and myself. The partnership started in December, 1936. I was standing on the corner with Ignaro. A car pulled up with four men. Ignaro left me and ran into the restaurant. I went in to see what was the trouble and I found him in the back of the kitchen. He said, "Louis, get me out of here. I think there are some people outside who want to harm me". I got him out of the restaurant through the back door, and we walked to Ninth Avenue into some restaurant, and he told me the whole story. He told me that he is in the dope business, and that he sold stuff to Romeo and Jerry Bruno and Don Alphonso and others, and that Mike Celli and Pete the Bug, Ignaro's partner, got him into trouble. Celli and Pete

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the Bug told Romeo that Ignaro got stuff and sold it to other people, and that Ignaro would not sell Romeo any more stuff. Mauro called up Ignaro at 55th Street and 8th Avenue, and said he wanted to see him. Ignaro went down to 380 Broome Street. Mauro shook hands with him, and told him to sit down and have some coffee. Mauro asked him if he had any more stuff, and Ignaro said that it didn't come in from Europe yet, but that he expected it in a few weeks or months. With that, Mauro got out of the chair and slapped Ignaro. 215 Ignaro pulled out a knife and started to go for Mauro. Somebody in back of the counter handed Mauro a gun. Ignaro saw there were too many for him, and he ran out and over near Police Headquarters. He then got a cab and came back to 55th Street and 8th Avenue. When he saw the car with the people, he figured they were from downtown.

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Ignaro then said that as I worked for Jimmy the Blond, who is a big man, maybe I could fix up the trouble. I told him I would try. I got in my car and went over to Jimmy the Blond at 141 Mulberry Street. Jimmy the Blond asked me why I was interested, and I said that he borrows money from me. Jimmy the Blond said he would let me know later than night.

About 6:00 o'clock that evening, Jimmy the Blond telephoned me, and said that he wanted me to come down with Ignaro. I told Jimmy the Blond to hold the wire while I spoke to Ignaro. Ignaro did not want to go downtown, so Jimmy the Blond told me to come down alone.

I went down and Jimmy the Blond asked me why I didn't tell him that I knew a man like that. I said, "What do you mean?" Jimmy said, "Ignaro is the

biggest man in narcotics. He can get as much as 1000 pounds from Europe. He has a good connection." I said, "I knew he is in the dope business, but I don't understand." He said, "Do me a favor. Talk to Ignaro, and we will go into the narcotic business." I said, "All right. I'll talk to him," and I went back to 55th Street and talked to Ignaro about what Jimmy the Blond told me. Ignaro said he had had a lesson from downtown, and did not want to sell to any more gorillas and tough guys. I called up Jimmy the Blond, and he said he was coming right up. He came up and told Ignaro he would not have to worry any more about Mauro. That it was all fixed up, and that Ignaro could tell people that Jimmy the Blond was interested in him. Jimmy the Blond said he knew a lot of customers, and could get rid of all the stuff for him, and wanted to make some kind of an agreement. Finally Jimmy the Blond said, "I work for some man around 90 Elizabeth Street, one of the best people in the country. His name is Joe Paduch." Ignaro then said, "This month (December, 1936) I expect a shipment of 330 pounds." Jimmy the Blond thought Ignaro was crazy, but I told him that Ignaro tells the truth. Jimmy the Blond said, "All right. I will get the customers all lined up. When do the 330 pounds come in? You can consider that they are almost sold."

We then went into partnership, Ignaro, Papa, Jimmy the Blond and myself. In the last week of December, Ignaro told me that the 330 pounds came in and to notify Jimmy the Blond. I notified Jimmy the Blond, and he said to come downtown. I went down to 141 Mulberry Street, and Jimmy introduced me to Little Joe, 86 Mott Street. Jimmy said that the other man wanted to buy 100 pounds now, and would take the rest later.

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1 : 220 Jimmy, Little Joe and another fellow, Vaccaro, made an agreement for the next day. We called up Ignaro, and he said at 3:00 o'clock in the afternoon he would give the answer.

1 : 221 The next day we went to Jimmy the Blond's place at 141 Mulberry Street about 1:00 o'clock. At 2:30 o'clock, Little Joe showed up with Vaccaro. Felix Papa was there also. Little Joe took out some money and gave it to Jimmy the Blond. He said, "I am afraid. This is the first deal. Suppose I lose the money?" Jimmy said, "If you lose the money, Louis will stand responsible for this," and I said, "All right". It was then arranged that Vaccaro take the money and accompany me. We were to buy 100 pounds for \$68 a pound, and \$4.00 per pound profit to be paid later. I and Vaccaro drove to 55th Street and 8th Avenue. I left Vaccaro in the car, and went in to see Ignaro. Ignaro saw the man in the car, and said he would not deal with us if anybody came in between. He did not want anybody to know he was selling the stuff.

1 : 222 He then told me that a man by the name of Joe and Pete called him up. There had been some mistake, and that they could not get the stuff from the boat, and that they would let it go until the next day, or until the next time the boat came in again, which would be in January. He said that in the meantime there was another boat coming in from Europe with between 300 and 500 pounds. Ignaro told me that Joe was the big boss from Brooklyn. Joe is about 5 feet 5; short and stocky, and owns a green Pierce Arrow two door sedan.

We called the deal off, and Vaccaro took the money back to Little Joe.

About January 17th or 16th, Ignaro told me to get

ready. Ignaro went to the waterfront himself, and they took the stuff off the boat. I told Jimmy the Blond and he came up and saw Ignaro, who explained all about the new 300 pounds. On February 8th, at 6:00 o'clock, Little Joe came down to 141 Mulberry Street, and turned over \$6800 to me. Felix Papa and Jimmy the Blond were present. I took Jimmy the Blond's car and accompanied by Felix Papa, went to meet Ignaro at 55th Street and Eighth Avenue. There I met Ignaro and Boysa. Ignaro asked me if I was ready and had the money. I said yes. We went over to 84th Street and 4th Avenue in Brooklyn. Ignaro and Boysa told me to stay in the car, and Ignaro took the money. There was a car waiting there with a number 4K 204. The man in the car was Joe Lago. Other men there were Francois Capperio, Felix Papa, Boysa and Luciano. Ignaro gave the money to Joe Lago and Capperio. Ignaro came back and said, "Boysa will tell you what to do". Boysa got in the front with me, and Papa sat in the back.

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Boysa told me to keep driving, and I kept driving. We were riding along Kings Highway. Boysa assured me we would not lose the money. A car in back of us blew a horn several times, and I saw a 1931 Buick Sedan in the mirror. I pulled over to the curb, and Boysa got out and went over to the other car. He then came back, and said, "Keep driving". We drove another few minutes to East New York to a place which I learned was Boysa's home. Boysa said to me to leave the keys in the car and to come upstairs. We went up and waited in Boysa's apartment for about three-quarters of an hour. I did not see Ignaro any more. Ignaro then came in, and he and Boysa had their clothes all full of white cotton-like stuff. They then told me to go down and start the car. They then asked me which is

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the compartment of the car, and I showed them the trunk of the car. Two minutes later Ignaro came out with a package from the cellar and Boysa also came out with a package which they put into the trunk. They closed the trunk and told me to make a right turn on the corner, and then go where I wanted.

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I started off and a Pierce Arrow followed me for about ten blocks. I drove to Clinton and DeGraw Streets, Brooklyn where we were supposed to meet Little Joe and Jimmy the Blond. I had been instructed to stop on the corner underneath a lamp post, to shut off my lights, and to wait in a restaurant on Fourth Avenue until I was picked up. When I got out, I passed Jimmy the Blond and Little Joe, and a man by the name of Frenchy. They said, "O. K." and I said, "O. K." I kept on walking, and Jimmy the Blond got into the car I had just left, and drove out to a garage on Clinton and DeGraw Street. 25 minutes later Jimmy the Blond picked us up at a restaurant. Felix Papa, Jimmy the Blond and I then drove to 141 Mulberry Street. Little Joe and Frenchy in a 1937 Maroon Pontiac also went to 141 Mulberry Street. Jimmy the Blond told me that Joe had given him the \$4.00 on every pound, and he gave me \$250.00 to give to Ignaro.

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Jimmy the Blond drove me uptown, and he said that Joe said the stuff was beautiful, and he would buy the whole lot. When I got to 55th Street, I gave Ignaro the \$250, and told him the people are satisfied. He wanted to know when the next buy would be made, and I said I did not know, but that Jimmy would be there later. When 12:00 o'clock had passed, I called Jimmy and told him that Ignaro wanted to know when the next buy would be made. He said that Ignaro would have to wait a few days to give people a chance, as the

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quantity of stuff being bought was large.

I told that to Ignaro who became irritated, and said that he could sell it to other people who could buy the whole quantity immediately. He said that if Jimmy the Bond didn't buy it in a day or two, he would sell to somebody else. I conveyed this information to Jimmy the Blond. Two days went by, and we were unable to make the purchase. Ignaro was very much irritated, and a date was made for January 20th between Jimmy the Blond, Felix Papa, Ignaro and myself. I remember the date because it was the night of a fight going on at the Hippodrome, and our date was for 12:00 that night. I don't remember the names of the fighters who took part that night right now.

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After the fight, we went down to see Ignaro at the restaurant at 55th Street and 8th Avenue. Ignaro said he would only give us until the following day to buy the stuff. Jimmy the Blond said that he was sure that he would be able to buy the stuff on the 21st either through Little Joe, or through people whose names he would not mention. Ignaro was pleased, and we made a date to meet again at 4:30 o'clock the following day at Jimmy the Blond's place, 141 Mulberry Street. Jimmy the Blond had an appointment with Little Joe for that time.

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At the appointed time, Little Joe did not arrive, and Jimmy the Blond went to 84 Mulberry Street to get Joe. Joe was not there. Vaccaro was there, and said that Joe went to raise the money so they could buy everything. Finally Joe showed up about a quarter of six. He had about \$14,000.00 which he turned over to Jimmy the Blond. Jimmy the Blond gave part of the money to me and to Felix Papa. There was \$500 extra which Jimmy the Blond gave to Felix Papa to be used

to bribe police in case they were stopped.

Felix Papa and I went up to 55th Street and 8th Avenue, and told Ignaro we were ready to buy. He wanted to know if we had the money, and we told him we had. He told us to go to 86th Street and 4th Avenue in Brooklyn, where he would meet us. We parked alongside the subway station at 86th Street and 4th Avenue. Ignaro came out from the subway together with Boysa and Capperio. On the other side of the street was Joe Lago and another man. Lago walked past my car. Ignaro came over to the car, and asked for the money which we gave him. Ignaro then gave the money to Lago and Caputo. Boysa got in our car and we drove to his house again. This was January 21st, 1937. We stayed in Boysa's house about an hour and fifteen minutes. Boysa took Papa and myself upstairs, and then he went away. Boysa and Ignaro came back and told us everything was ready, and told us to go outside to the automobile and get it started, and wait. Then they went down the cellar and brought up four packages and put them in the car. I delivered the packages to Clinton and DeGraw Streets, Brooklyn, where I met Jimmy the Blond and Little Joe.

We were waiting there and sitting in Little Joe's car when we saw Little Joe come out of a private garage. He went in through a public garage, but it connected with a private garage. When Jimmy the Blond and Joe were through, we drove back to 141 Mulberry Street, and that was the end of that deal.

I telephoned Jimmy the Blond many times from the Central Bar and Grill, Circle 7-9352 to Canal 6-8774, 141 Mulberry Street. We continued the partnership because Jimmy the Blond was making a kitty, and we wanted to get our share out of it. The kitty meant

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we did not take our share out immediately, but permitted it to accumulate so that we could have enough money to buy narcotics directly instead of looking for a buyer, and thus permitting ourselves a larger profit.

I had conversations with some of these men about the narcotics brought into the country. I spoke to Caputo, Ignaro and Joe Lago. I spoke to Caputo on 55th Street and 8th Avenue in the presence of Ignaro. This was after January 21st, 1937. Caputo told me that he comes here with a shipment and stays here until he and his partner sell the stuff. Then he takes the money and goes back to Europe, and comes back a month or a month and one-half later with some more stuff. He did not tell me who his partners were.

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I had many conversations with Ignaro regarding the bringing in of narcotics into the country. I cannot fix the time, because we were always talking about it. Ignaro told me that Frenchy Caputo is a brother of Gennaro Caputo, also known as John Caputo. Frenchy Caputo would go to Marsailles, France. There was a big man who did the buying, and put it on a steamer. Frenchy would take a different ship and come here a week or so before the stuff arrived. Then the partners, all the big bosses in Brooklyn, would sell the stuff. He told me that Joe Lago was a partner, and Gennaro Caputo and some man by the name of Pete, and that there was also some other man in Europe. This is the big combination that sells to everybody. That is not Pete the Bug. This is a big man supposed to be a millionaire. I saw this man Pete. His correct name which I learned later is Sanpedro.

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The third deal in the partnership involved sixty pounds of gum opium. This was about the week after January

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21st. Jimmy the Blond could not get any more customers, and he asked me if I could get any customers, but I did not know anybody in the business.

239

About the first week of February, 1937, Jimmy called me at the Central Bar and Grill, and told me to come down to 141 Mulberry Street, as he had trouble with Nicholas Gentile who wanted ten pounds of opium on trust. When I came down to 141 Mulberry Street, they took me over to 90 Elizabeth Street, and introduced me to Nicholas Gentile. I told them the only one that would give them credit is Ignaro.

240

We then went to Ignaro and told him about Gentile, and he said he would let us know in a few days. We had told him we wanted the whole sixty pounds on trust instead of the ten pounds. The next day Ignaro told us he would give us ten pounds at a time on trust instead of the whole sixty, and as we sold it we would pay for it, and get another ten pounds. He also gave us a reduction in the price from \$68 to \$66 a pound. We arranged to pick up ten pounds the next day. The next day I went to 55th Street and 3th Avenue about 4:00 o'clock, and I had a date to be in Brooklyn at 64th Street and 4th Avenue at 6:00 o'clock sharp to pick up the stuff.

I went to 66th Street and 4th Avenue, and there I met Ignaro and Boysa on the corner. Suddenly Joe Lago appeared in a hallway with a package in his arm. Boysa went over and took the package from Lago. Then I delivered it to 141 Mulberry Street where Jimmy took it and delivered it to Gentile for \$740. Gentile promised to pay the money in about eight days.

Twelve days went by, and the money had not been paid. Ignaro then began to bother me about the money. I

went to Jimmy and told him that the people in Brooklyn wanted the money. Jimmy, however, said that Gentile is a big man in 90 Elizabeth Street, and that he did not have the courage to ask him for the money.

Finally I told Jimmy that Ignaro wanted to see him. We had a meeting, and Ignaro said that he would borrow the money and pay the people in Brooklyn, if Jimmy could not get the money, but they would be through with the partnership. Jimmy asked him to wait a day or two, and then he would surely get it. That night I met Jimmy about 1:00 o'clock at 141 Mulberry Street, and we went into a crap game, and about 4 o'clock in the morning when the game was over, we were paid off by Gentile. He gave us \$700, and he said he would give us the \$50 later. Out of the \$700 I gave \$40 to Jimmy and \$660 to Ignaro.

242

When I paid Ignaro the next day, he asked if I wanted ten more pounds on trust. We had already agreed to take ten more pounds, so that night at 6:00 o'clock we made a date to meet at 65th Street and 4th Avenue. The next day at 6:00 o'clock I met Ignaro and Boysa. A few minutes later Joe Lago pulled up on the other side of the street with a 1935 Ford. Boysa walked over to Lago, and Ignaro got the package and gave it to me. I put it on the floor of my automobile and drove down to Third Avenue, to 141 Mulberry Street.

243

The ten pounds was put in a room above a saloon at the corner of Mulberry and Hester Streets. This belongs to Jimmy the Blond's nephew. We paid half his rent, but he did not know what was in the packages. He only kept the stuff and a scale there. We used the scale to check the accuracy of the weight.

We then went downstairs 141 Mulberry Street, and

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discussed going into the pound business, so that we can build up the kitty and make a lot of money. Jimmy told me to ask people on the corner, of 55th Street if they wanted to buy any stuff. Ignaro introduced me to a man named Kelly, also known as Dominick Visco. Kelly wanted several pounds, and I told him it was \$85 a pound. He gave me \$255. I put Kelly in my car and took him to Mulberry Street. As we were crossing the corner on Hester Street, Joe King happened to be on the corner, and he spoke to Kelly for a while, and he then asked me why I was taking his customer away. I said that I had just got him. Kelly then said not to mind him, and we went to Jimmy the Blond.

245

I gave Jimmy and Felix Papa the money, and they went upstairs to get the 2 pounds of opium. We kept the key to the opium in the cash register. Papa brought the stuff down to me, and Kelly told me to meet him with it on the corner of Grand Street and the Bowery. I gave the stuff to Kelly on the corner, and he went away.

1 246

Two or three days later Jimmy told me he had a new customer by the name of Louis King, who would take a kilo for \$180. He was later introduced to me as Vincent Carreria's godfather. Jimmy told me that Louis King would take the kilo on trust. Louis King's man, Joey the Wop, also worked for Joe King. As they sold the stuff in small tins, they would pay Jimmy. When they finished paying for one kilo, they would take another on credit.

Visco took two pounds every fifteen days. However, about this time, about nine or ten days after the prior sale, he came to 55th Street, and said he wanted three pounds of opium. I had been instructed by Jimmy to sell either one kilo, which is over two pounds, or two

kilos. Visco or Kelly came to the corner of 55th Street and gave me about \$355 and asked for three pounds. I told him he had to take either one kilo or two kilos, and I told him he would have to go down and talk to Jimmy. He accompanied me to 141 Mulberry Street, and he took two kilos. I charged him some place between \$85 and \$95 a pound.

Each time we sold ten pounds, we had money to purchase another ten pounds. I would give the money to Ignaro, and he would make arrangements to meet the next day to make a purchase. This particular practice took place during the first week of March, 1937. We would go to the corner of 65th Street and 4th Avenue, Brooklyn. There I would meet Boysa, Ignaro and maybe Lago. Boysa would obtain a package from Lago and give it to me. I would bring it to 141 Mulberry Street, and then it would be put in the same house on the corner of Hester. About every two weeks we would get another ten pounds. In addition to Louis King and Dominick Visco, we had two other customers, one named Gus, and another man whom I don't know.

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The third time Visco made a purchase he came to 55th Street and 8th Avenue, and he gave me about \$355. He wrote his phone number on a bill, and told me when I got the stuff, to call him up, and to make sure that I didn't give the number to anyone else. I went down to Jimmy, and he put the stuff in the compartment of my car, and then I called Visco up. He would speak in Italian, but in code. I would meet him on the corner, and he told me to drive to an address in East 60th Street, where I delivered the stuff to him.

249

I purchased the fourth shipment also in March, 1937. We made two more purchases, and then there was no more opium until a new shipment came in.

I made a lot of sales to Kelly and to Louis King. Before we could get another shipment, I was arrested on May 24th, 1937.

251

The last sale we made was to a man known as Doc and Celli. I first became acquainted with Celli about the end of March or the first week of April, 1937. Ignaro introduced me to Celli on the corner of 55th Street and 8th Avenue. Ignaro told me Celli wanted to buy some opium. Ignaro did not want to sell him, and then Celli said he wanted to sell his 25 ounces of cocaine. I told Jimmy that a man wanted to sell a can of cocaine. After five or six days, of hanging around by Celli, Jimmy finally told me that Little Joe would buy the 25 ounces of cocaine. Celli told me that he had about 152 ounces altogether of cocaine that he had given to Romeo to hold for him.

252

When Jimmy told me he had a customer, I asked Celli where the can was, and he said uptown. He took me to a garage where he said his brother worked. He took a key out of his pocket, and turned over the 25 ounces of cocaine which was in an Adam Hat Box. I delivered the cocaine to Jimmy.

Jimmy got in touch with Little Joe, and the man known as Vaccaro came over for a sample of cocaine. Jimmy then asked for \$26 an ounce, and Joe claimed it was too dear, and said he didn't want it. Another sample was given to Gentile. Jimmy did not sell it to anybody, and Celli was bothering me, so we finally decided to buy the can for \$250, and we paid him \$250. I received \$15 from Celli for selling the can, of which I turned over \$7.50 to Ignaro.

While all this was going on, Celli introduced me to a man by the name of Doc, who is in this court room now

(indicating Narcotic Agent Esch). Celli told me that Doc was a customer of his from down in Georgia somewhere, and he wanted a pound of gum for \$110. Ignaro and I asked Celli how well he knew the man and he said he had been dealing with him for four or five years. We did not trust him, and we said we would see.

However, we telephoned Jimmy for a pound of opium, which Papa brought down, and put it in a hallway at 300 West 55th Street. We then spoke to Celli. Celli called up Doc, who asked that he be met at the elevator station on 9th Avenue and 52nd Street. We told Celli he would have to make delivery of the pound to Doc. We gave the stuff to Celli, and Ignaro and I followed him.

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Celli met Doc and gave him the opium, and we then walked along Ninth Avenue. Ignaro knew a shoe maker in a shop, and when we got there, Ignaro walked up to Doc and Celli, and told them to go into the shoemaker's. We went in the back, and Doc wanted to test the opium to determine its quality. He had a knife in his hand which I took from him, and plunged the knife into the package of opium and showed it to him. Doc was satisfied and he gave Ignaro and me \$110.

255

I gave \$10 to Celli as a commission for obtaining the customer. Ignaro and I kept \$10, and the rest we turned over to Jimmy for the partnership. I thereafter sold Doc heroin and a lamp. The heroin was obtained from one, Vincent Leoni, whose brother brought it in on the Normandie about every two or three weeks. Jimmy had told Leoni that he would take every shipment. We had two samples of the heroin, one for Jimmy who wanted to give it to Gentile, and the other one Ignaro gave to Doc. Ignaro gave the sample to Doc in the Central Bar & Grill at 55th Street and 8th Avenue.

After that we sold Doc two kilos of heroin. I saw the two kilos first at the house of Angelina and Louis Cologna, 404 West 56th Street. The other people there were Leoni, Ignaro and two Colognias. I saw the stuff about 11:00 o'clock in the morning on April 14th, 1937.

Prior to my going up to Cologna's house, I had a talk with Ignaro, Jimmy and Leoni. I was to meet Leoni on April 15th to buy two kilos of heroin for Gentile.

257 I paid the money to Leoni and Vincent Cologna, and I received the two kilos. I then remained in the apartment with Ignaro and Angelina and Louis Cologna. Leoni went away.

258 I then opened up the two kilos, and made a small package for Doc. Angelina put the small package away. I took the remainder in my car to Jimmy at 141 Mulberry Street. I then delivered the stuff to Tony Lima, who is Gentile's man. I made the delivery to Lima at 326 East 13th Street, on the third floor. Lima did not pay me. I received the money from Gentile on April 15th, at 90 Elizabeth Street. Gentile did not have the money, and I went with him to the Western Union to get it. Before we went over to the Western Union, Gentile told me that the heroin was for Lima, his man in Texas. When I received the money, I then called Ignaro. Ignaro told me that he could not arrange with Leoni to make delivery until April 16th, 1937.

The price for the two kilos of heroin was \$1960. When we went over to the Western Union, I was on the outside, and Jimmy and Gentile went inside. Gentile showed the man in the Western Union some letters. I was about 15 feet away from Gentile. After they came out of the Western Union, I spoke to Jimmy. I did not speak to Gentile. From the Western Union we went

to Philip Kromfield's, where Gentile had some shirts made to order. Gentile paid for the shirts in cash. While Gentile was getting the shirts, Jimmy took me on the side, and said that Gentile got a check from Texas, but it was too late for the Western Union people to cash it.

We then went back to 90 Elizabeth Street. Gentile said he would borrow the money from the safe where he keeps money for the crap game. He came out with \$1960. I then called Ignaro and told him I had the money. Ignaro told me that he could not arrange to have it until two o'clock on April 16th, 1937. I informed Jimmy of this who said that he had better tell Gentile, as his man had to leave for Texas on the 16th. We offered to return Gentile's money, but he told us to see Lima and make arrangements with him. We saw Lima about 12:00 o'clock that night, and told him we would arrange to have the stuff at 2:00 o'clock or 2:30 o'clock.

260

The next day I saw Vencileoni and received two kilos of heroin for which I gave him \$1750. When I received the stuff, I took it to Jimmy who was out, so I went over and delivered it personally to Lima.

261

I saw Vencileoni the next day at 55th Street and 8th Avenue. That is a place he used to frequent. Ignaro was with him at the time. We discussed the time of the next shipment aboard the Normandie. We expected a shipment in about the end of April, 1937.

On April 14th, prior to the time we obtained 2 kilos of heroin, Charlie La Gaipa tested the heroin to see if it was 100%. (Witness identifies La Gaipa in Court.) I had a conversation with La Gaipa on the 15th, when he told me that the stuff was not 93%. I was introduced to La Gaipa by Gentile and Jimmy. At the time I was

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introduced, I told La Gaipa that a chemist uptown had said the stuff was 93%. Then La Gaipa said that the stuff was not even 80%. Finally I told La Gaipa, "if you don't believe the stuff is 90 or 93%, I will call my man, the chemist," meaning Doc. La Gaipa, Gentile and Jimmy listened to the conversation. I called up Doc and told him that I was going to make a bet, and that I wanted his opinion on the percentage that the heroin was, and Doc told me that I can bet that the stuff is better than 80 or 85%. With that La Gaipa said he didn't want to interfere any more, and told Gentile to do as he pleases, but not to blame him.

I telephoned Doc at the Cornish Arms on the 23rd. During the conversation Doc reminded me not to forget his three ounces.

The next shipment to be obtained from Vencileoni came from the Normandie or the Ile De France, a ship of the French Line. We had an agreement to buy all the stuff that Vencileoni brought in.

264

Before we sold the two kilos to Gentile, I told Jimmy that a man uptown wants to buy 2 or 3 ounces at \$45 an ounce. Jimmy told me to take out 2 or 3 ounces from the two kilos, and that Gentile would not know the difference. I took out the 2 or 3 ounces before I delivered the two kilos. Then I purchased a scale and I went back to Angelina Cologna's house, and Ignaro and I weighed the stuff we had taken out of the two kilos. Instead of three ounces, there was four ounces. We did not tell Jimmy about the extra ounce. We sold the ounces to Doc on three different occasions at \$44 an ounce. Ignaro kept the extra \$10 and also \$55 or the extra ounce.

When I delivered the heroin to Doc Esch the first time,

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he bothered me for a smoking lamp. I told Jimmy about it, and he got in touch with Joe King. I gave Joe King \$12, and he gave me a lamp which I sold to Doc. I made a few dollars on the deal. This lamp (Ex. 2 in evidence) is the one I sold.

Lima who was known to me as Dick Latonie, told me that he was going to send the stuff to New Orleans by means of his daughters. The daughters were to take a suit case, and go there by bus. If anything happened, they were not to claim the suit case.

266

I had a conversation with Gentile, Jimmy and La Gaipa in reference to Texas. This took place in front of 90 Elizabeth Street. Gentile invited us to come out to Texas where he knows Sam Maceo, a big man who owns all the night clubs. La Gaipa asked Gentile whether he had made Maceo his partner, and Gentile replied, "He is my partner".

After the first shipment of heroin, we purchased two kilos. The next shipment was at the end of April. Prior to the arrival of the boat, I had a conversation with Vencileoni, Ignaro, Jimmy and Felix Papa, and a man from the boat named Joe.

267

That night we met again and made arrangements for Charlie Morgan and Louis Liguori to take the stuff from the boat the following morning. (Witness identifies both these men in Court.) The next day I had a date at 12:00 o'clock to meet Ignaro on 55th Street and 8th Avenue. When I got there, Vencileoni said that Ignaro wanted to see me in Angelina Cologna's house. I went there. When I opened the door Ignaro was standing there with a hammer and threatened Morgan and Liguori. Ignaro said that both of them had said that they were robbed in front of Angelina's house. Ignaro told me that he

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had accompanied Morgan and Liguori to the boat, and that Morgan had registered as a longshoreman, and had gone on the boat, obtained the stuff, and then came down. Ignaro, Vencileoni and Louis Cologna were waiting for him with a cab. Ignaro mentioned to Morgan and Liguori to get into the taxi. Instead they got into another taxi. When they got to 404—56th Street, Morgan and Liguori said a man in a Ford coupe asked them if they knew James Butler. Morgan went over to the car and the man said, "Get in the car." Morgan was driven to Second Avenue and 12th Street. The stuff was taken from him, and he was thrown out of the car. He had taken the license number which he gave to me. When I heard the story I said he was lying, and struck him.

269

I then went downstairs and telephoned Jimmy the Blond, he told be to bring Morgan down to Mulberry Street. Ignaro and I and Vencileoni took Morgan to Mulberry Street. We left Liguori in the custody of Louis Cologna, who vouched for him.

270

On the way down town, I told Morgan it would be best for him to tell the truth, and he asked to be taken back to Angelina's house, and given a chance to talk alone to Louis Cologna. He thought that in that way he would get the stuff back.

We went back to Angelina's house, and Morgan and Liguori went into a bed room alone. "Then Morgan came out and said he would get the stuff back, and told us to drive to 116th Street and 8th Axenue. Ignaro, I and Vencileoni accompanied Morgan. Morgan went into a Bar and Grill on 116th Street and 8th Avenue. He returned in about 15 minutes, and he said that he would be able to get the stuff in an hour. We waited in a restaurant near there for an hour. We then went out

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and Morgan spoke to some men in a big car, and then he came back and said the stuff was already in Angelina's house on 56th Street and 9th Avenue.

We returned to Angelina's house and found Louis Cologna in the street with several other people. Cologna said that a man by the name of Willie Brown had the stuff, and wished to speak to me. I went over to this man. He said that he was Willie Brown from downtown, and he wanted to know who was in back of me. I told him Jimmy the Blond, but that was not sufficient, and I told him Nicholas Gentile. He then said that he would talk to Gentile, and told us to meet him in a half hour in 90 Elizabeth Street. Willie Brown had also said that he had the stuff, but that it did not belong to him.

272

Ignaro, Vencileoni and I then went to 141 Mulberry Street. After we arrived Jimmy and I went to 90 Elizabeth Street to see Gentile. Gentile was not there, and we met Willie Brown and had a talk with him in a restaurant on Grand Street.

Willie Brown said that on April 17th or 18th, Liguori and Morgan came to him and told him that they took stuff off the Normandie for a Frenchman, who had no connections here. Seeing that Gentile was interested in the stuff, he would get it back, but only if he received \$1000 which he had paid to Morgan and Liguori and two other people.

273

Jimmy refused to pay any money, and said he would see Gentile. He told me to go up and tell Vencileoni not to worry.

That night Jimmy telephoned me that Willie Brown had obtained \$200 from one of the men who helped hijack the stuff, but that he was still out \$800. Finally

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Jimmy and Willie Brown compromised. Willie Brown offered to give back a kilo of heroin, and \$170. Jimmy told Vencileoni he would give him \$1000 or the kilos. We finally paid Vencileoni, but we received no more shipments through him. Willie Brown turned over one kilo to Jimmy. After Jimmy received it, he put it in his mother-in-law's house across the street from 141 Mulberry Street. Thereafter we sold the kilo an ounce at a time.

275 Ignaro had a customer named Charlie to whom he sold at the rate of about an ounce every two or three days.

In April we got a can of cocaine from Al Mauro for Doc Esch. I received the order from Esch in the Central Bar & Grill. Celli and Ignaro were present at the time. I spoke to Jimmy, Felix Papa and Al Mauro about getting the cocaine. I spoke to Mauro in front of 141 Mulberry Street in April. Al Mauro gave the can of cocaine to Felix Papa.

276 I received the can personally on May 24th, 1937, at 60th Street and Ninth Avenue, from Felix Papa. I then gave it to Boysa at the same corner. I told him to deliver it to Doc. I had a conversation with Boysa prior to the time I gave him the can. Later in the day after I gave him the can, I saw Boysa. I had followed Boysa to the hotel where Esch lived. I went up into the room where Esch lived, and found Boysa and Doc there. I received \$565 and \$575 from Dr. Esch. Boysa was present at the time. When I went downstairs to meet Ignaro and Papa, who were waiting for me. I gave the money to Felix Papa. I got \$15 out of the money. I gave Boysa \$5 and I also took out \$50 from the kitty for Ignaro. We then went over the Central Bar and Grill, where we were arrested. Papa threw the money

into a telephone booth. I did not recover the money.

I went to New Orleans in September, 1937. I met Tony Lima and talked to him about purchasing narcotics. I met him in front of Norfea's Bar & Grill. We telephoned him and said that there were two people from New York to see him. I was there with Mr. Clapper, a government agent.

Tony Lima came down and met Clapper and myself. I introduced Clapper to Tony Lima, who was the same man that I met in 13th Street in New York. I told Lima that Clapper was a customer of mine from the South, and wanted 100 ounces of heroin similar to the two kilos I sold him. Lima said, "I still have some of the stuff left out of your two kilos." I asked him how it happened that he had some stuff left, and he said that Gentile had obtained ten kilos from La Gaipa, and that therefore he had saved my stuff for last.

278

I then asked him if he had some gum, and he said, "No. The last gum I obtained was from a boy in Detroit." I also asked him if La Gaipa was selling down in New Orleans and Texas, and he told me that La Gaipa had been there for a month, and had gone back home, but that Gentile was living in Houston, Texas, and had bought a brand new Buick on which he used Ignaro's plates.

279

Lima told me that he could not give me the 100 ounces because he did not know what price to charge me, due to the fact that I was a good friend of Gentile. He further said that Gentile would arrive in a few days, and that I could talk directly with him. He then invited me alone to the Sportland Beer Parlor which he owned to have a bite. We ate together.

I telephoned to the Sportland Beer Parlor several

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times from the colored section in New Orleans. I telephoned them the first time about three days after I arrived in New Orleans. I met a man named Ciccofera at Norfea's place. This man telephoned Lima and told him that there were a couple of friends of his from New York.

I did not receive any heroin from Lima in New Orleans, although I saw him two or three times. I asked him how business was, and he told me that it was bad because several people had been arrested, and he believed that somebody had ratted on him. He said he was afraid to use his two cars because of the police. He told me that some men were arrested in Houston, and that he went to see Sam Maceo in Galveston about fixing it up.

I told Lima that I did not want the heroin. I remained in New Orleans approximately two months. While there I saw Vencileoni. I never mentioned his name before. He is not the man I mentioned as John Vencileoni. That man is not in Court at present. I don't see any man here whom I saw in New Orleans.

Cross Examination by Mr. Zelenko:

I am testifying here because I wish to tell the truth. I am 29 years old, and was born in Brooklyn, in the United States.

Some people call me Louis the Bum. My family does not call me that. I received the name of Louis the Bum because when I was about 17, I was arrested for disorderly conduct. In the patrol wagon there was another prisoner known as Bum Rogers. When I was

freed of the charge, I told everybody in the neighborhood that I had been arrested with a man by the name of Bum Rogers. There was a friend of mine known as Greasy Collie, who said that I looked like Bum Rogers, and he used to tease me and call me Bum Rogers. One day I had a fight with him and threw a stick at him. I had to leave the place because my father came down and wanted to hit me. After that I was called Louis the Bum.

I remember license numbers when I write them down. I never had a job where I put down license numbers.

284

After I left the lumber yard where I had the fight, I worked in the West End Laundry, 63rd Street between 15th and 14th Avenues. I worked there for about a year and a half or two. I don't remember where I was in any patrol wagons during that period. I was earning \$45 a week when I left the place. I was a route man. I never acted as a body guard. I was between the ages of 19 and 22 at the time.

After that I worked for the Art Crayon Company on 36th Street, Bush Terminal. I made crayons. I earned between \$50 and \$60 a week as a piece worker. I was about 25 or 26 years old. I worked there for about a year or two. I left there 7 or 8 years ago. I don't really remember my age on every job I had. I have a good memory sometimes. If something happened, I remembered it.

285

After I worked for the crayon company, I went back to the West End Laundry as a helper on a truck. I don't remember when I left that job. I don't remember how long I worked there. I was making about \$18 or \$20 a week. I did not work as a body guard. I did not carry a gun. I never carried a gun in my life.

286 *Louis Ruppolo—for Government—Cross*

287 I was convicted once for burglary in 1926. I don't remember whether I was working for the laundry at that time. I did not go to jail or to reform school. I was convicted in the Kings County Court by Judge Vause. In 1929 or 1930 my mother had me arrested for vagrancy and I was put away in the New York State Reformatory. I was there nine months. After that I was let out on parole. I was out on parole for about two years when they sent me back for violation, and they sent me back for three or six months more. My violation consisted of the fact that I did not report to the Probation Officer.

After I worked in the laundry for the second time, I was married and went to Chicago, where I worked as a switchboard operator in the Hotel Will Ray. I received my room and \$7 a week at the hotel, in addition to tips. After three or four months I received a better job. The Will Ray was owned by Kaplan. He was one of Mr. Capone's associates in Chicago.

288 I was married on February 22nd, 1934. I obtained a job in the Will Ray seven or eight months later, near the end of 1934.

My next job was at the Hotel Castlewood. I was a switchboard operator and night clerk. My wife helped me also. We earned together about \$70 a month, in addition to our room.

I had a bank account, but not before 1934. I had no other source of income. I worked at the Castlewood for about two or three months. I don't remember exactly when I got the job. The Castlewood was owned by Mr. and Mrs. Geech. I don't know the address of the hotel. My wife knows it. It was around Sherwood Grove. I don't remember the address of the Will Ray

Louis Ruppolo—for Government—Cross

289

Hotel. I did not receive mail in the hotel.

After my job at the Castlewood, I came back to New York City in April, 1935. I came back by train. I did not obtain any job after that. Since that time I have had no legitimate employment. I lived in Kings Highway, Brooklyn. I don't remember the address. I don't remember how long I lived there. I then moved to Berkley Place, Brooklyn. I don't remember the address. I don't remember how long I lived there. I was moved to 754 Carroll Street. I don't remember when I moved there. I lived there when I was arrested in this case. I had been living there for about a year or a year and one-half before I was arrested. The longest I ever lived in one address was a year or a year and a half.

290

In Kings Highway my rent was \$6 a week. I paid the same rent in Berkley Place. In Carroll Street I paid \$6.25 a week. I had no bank account, but I had some money saved. I supported my wife by playing horses and taking bets on horses. I was never convicted of making book. I had about \$50 when I went into the bookie business. I only had two or three customers. I did not win all the time. In addition I used to gamble. I did not make book steadily. If somebody wished to bet a dollar, I would take it. I had between five and fifteen bets a week. In addition, I used to gamble. I was not very successful in making a living. That was until 1936. From 1936 to 1937, I was a shylock lending money on interest. I received a dollar for every \$5 lent. I worked for Jimmy the Blond.

291

When my customers did not pay their loans, I did not do anything to them. I never struck them. That was not my duty. Nobody else would strike my cus-

292

Louis Ruppolo—for Government—Cross

tomers. If they did not pay, I would give them a break.

My income as a shylock was between \$18 and \$20 a week. That and gambling was my only source of income. I lost and won quite a lot, and managed to get along.

293

I first owned an automobile in October, 1935. It was a 1931 two door Cadillac. I believe the license number was 3L3338. I am not sure of it, though. I don't remember when I moved in 1936, and how long I lived in the apartment. My wife takes care of that. That is part of her memory.

I know Angelo Yale, who owned a funeral parlor. I never took part in a shooting match there. I never carried a gun. I know Fury Grimaldi. I don't know Willie the Bum. Willie the Hawk is another brother of mine. I don't hang out with my brothers.

294

In October I bought a Nash car for \$40. I took it up to Kragen & Jones, 96th Street and First Avenue, and they allowed me \$125 towards the purchase of the Cadillac. I paid \$50 down and \$28 a month. I just bought the Nash to use it for trade in purposes.

I traded the Cadillac in after a year for a 1936 La Salle. They allowed me \$275 on the old car, and I paid \$50 cash. I have no car, the government having seized it. The government did not allow me to use the car.

I am out on bail now. I am not working. I paid \$8 a week rent. My food costs about \$10 a week. I have clothes so that I don't pay on that. I have no telephone or other expenses. I am paying my expenses from money which I saved. My wife had \$480 in the bank at the corner of Carrol and Seventh Streets.

Louis Ruppolo—for Government—Cross

295

I don't know the name of the bank. It is in my wifes' name. I had the money there when I was arrested. I don't go to the Central Bar & Grill now. My brother does not go there. I am not in the shylock business with him up there. I am receiving no money on this case.

I received money on a Chinaman's case. I don't remember how much I received. It was in November, 1937. I was paid sometimes by the day, and sometimes by the week. I received \$3 a day. I pleaded guilty in this case on May 2nd, 1938.

296

I was present at the time that Louis Liquori was arrested on 72nd Street and Amsterdam Avenue, in his taxi. I don't remember the date. It was between three and six months after I was arrested. I don't remember what month that was. The people with me when Liquori was arrested were two Federal agents, Johnny Cross and a man I never met before. I have not seen that man since. I am not at the Federal Office every day. When I testified yesterday, it was solely from memory. I have read no written statements concerning the facts to which I testified. I never spoke to Mr. Martin about the case. I spoke to agents, but not about this case. I did speak to Mr. Olivera and Mr. Artis, the two agents sitting next to Mr. Martin, about this case. I did not go through the testimony. They just told me to make sure and tell the truth in this case.

297

The first time I made a statement in this case was in July or August, after I came out on bail. Since then I have not examined any written statements that I made. I have gone over the case by myself. I have had no conversation with any agent or prosecutor in this case since I have been on the witness stand. I expect to go to

298

Louis Ruppolo—for Government—Cross

jail in this case. Nobody has promised me any immunity.

299

I live in a furnished room now. My mind is clear as to all the facts, and I remember some of the dates and times. All of the dates I have given are correct dates. The last time I met Liquori was about six or seven months before his arrest. He was arrested, I believe, about the end of December, 1937. I did not go along to identify him to the officers. They already had the plate number of his cab, and were following him. We had no conversation. I said, "Hello, Louis". He said, "I don't know you." I said, "I am Louis the Bum. Don't you remember me?" I said nothing else. Before that time, Agents Olivero and Artist put several pictures in front of me and told me to pick out Liquori. I picked out a picture which I identified as Liquori. I did go with the agents on the day they arrested Liquori. They did not ask me, "Is this the man whose picture you identified?"

300

I went on the Normandie three or four times before I was arrested. Sometimes it was in the summer, and sometimes in winter. I don't remember what months. I went to the Normandie with Ignaro to meet his connection man. I never was on the Normandie, but just went to look at it. I never saw Liquori on the Normandie. I never saw him carrying any stuff in his hands. Ignaro told me that Liquori had gone on the Normandie to get stuff. I never saw Liquori on the Normandie. I do not know of my own knowledge whether Liquori went on the Normandie for the first shipment.

I saw Liquori in the Central Bar and Grill about the end of April, 1937. This conversation took place at George's Restaurant, 53rd Street and 8th Avenue. We

Louis Ruppolo—for Government—Cross

301

then had a later conversation at the Central Bar and Grill. The meeting took place at about 8:00 o'clock at night. Joe from the Normandie was there. Ignaro, Vincileoni, Morgan and Liquori were at another table. The two tables were next to each other. We were not talking loud. The other men were waiting for us to give them instructions. The next time I saw Liquori was at Angelina's house the next day. Angelina and Louis Colonia were there, Vincileoni, Ignaro and myself. Liquori hadn't any narcotics on him at that time. I never saw him with any narcotics.

302

Liquori was not one of my partners. I never spoke to him about buying or selling narcotics. The first time I met him was April 14th, in the Central Bar and Grill. I spoke to him before the time he was arrested in his cab. When I saw him in Angelina's house, Ignaro was sitting in a chair holding a hammer in his hand.

All the testimony that I gave regarding the hijacking, was what Ignaro, Morgan and Liquori told me. I did not threaten to beat them unless they told me. I bought them with a five dollar bill. I treat them nice, and they tell me, because they talk better that way than when they are treated roughly. I do not beat them up if they don't talk.

303

After I came in Angelina's house, Ignaro put the hammer away. I did not have a gun in my hands at the time I was talking to Angelina. I spoke to Ignaro, and Ignaro called Morgan, and we spoke to him.

I gave the \$5 to Morgan after we left Angelina's house. My business deals were with Morgan at that time, when we went to 116th Street. Morgan was the lob, which means a sucker the man who does all the work.

304

Louis Ruppolo—for Government—Cross

I had a conversation with the sucker and Ignaro, in Angelina's house but not with Liquori. Liquori was in charge of Charlie Morgan. I did not speak to Liquori, but I did speak to Morgan. I slapped Morgan, and Angelina slapped me, telling me not to do that in her house. I then took Morgan to Jimmy the Blond for a further beating. After that I did not have to take him to Jimmy the Blond. During that time I left Liquori up in Angelina's house.

305

Most of the conversation about hijacking I had with Ignaro and Morgan. I also asked Liquori how it happened, and he said he did not know, but Morgan told him that a man came over and asked if he knew James Butler, and that Morgan then walked over to the car, and that then Liquori did not see him any more. Liquori told me he did not know anything else.

Cross Examination by Mr. Drescher:

306

In April, 1935, I returned from Chicago. In December, 1935, I was in an automobile with Ralph Liquorio in the vicinity of 380 Broome Street. He drove the car. It was before New Year's, 1936, but I don't know if it was before or after Christmas. It was about seven or eight months after I got back from Chicago.

I got in the car at 55th Street and 8th Avenue. When we got down to 380 Broome Street, Liquorio pointed out a man known as Scarface Al, known as Al Mauro.

I didn't testify that Mauro is the boss of J. B. and Alphonse. Mauro is one of the bosses. He did not tell me that J. B. and Alphonse were bosses. All he mentioned was their names. Liquorio stated that those

three people were together. I never told Esch on April 17 that I would have to go to Canada to get a large part of the stuff from Al Mauro. I never knew anything about Canada. I never told that to Agent Esch. I told him Celli had stuff from Canada and Mauro. I know nothing about Canada. Ignaro never mentioned the name of Joe Pettruczi. Ignaro told me that he sold to the best people, not that he worked for them. He talked about Little Joe. He did not tell me Joe Pettruczi. He mentioned Little Joe, Mauro, Don Alphonse and J. B.

308

In my testimony yesterday, I mentioned Joe Pettruczi in connection with a conversation in which Jimmy the Blond mentioned Joe Pettruczi to Ignaro. Ignaro never told me anything like that.

Cross Examination by Mr. Solomon:

The Western Union about which I testified was on Delancey Street near Second Avenue. The Western Union is a few doors away from Philip Kronfield's near the corner. I am not sure whether it is near Second Avenue. I did not go into the Western Union store. I remained on the sidewalk looking in. This was April 15th, 1937. I don't remember whether there are steps from the street to the store. The store was a small one.

309

I first formed the partnership for the sale of narcotics in December, 1936. Prior to that time I did not deal in narcotics. In December, 1936, my partners were Ignaro, Papa, Carreria and myself. The partnership ended May 24th, 1937, when I was arrested. There were no other partners besides the ones I just mentioned.

310

Louis Ruppolo—for Government—Cross

Boysa was never my partner, and neither was the taxi man. Any narcotics I handled from December, 1936 to May 24th, 1937, were on behalf of the partnership.

311

All of the profits of the partnership were never divided. I received some money. No one received any of the profits except the three people I mentioned and myself. We four knew what each of the other was doing. I knew what they were doing, and they knew what I was doing. I kept a record. It was an ordinary pad. I have not got it now, because I destroyed it when I was arrested.

I went to Texas with Mr. Clapper, a Federal agent. I met him at the new Federal Building in Church Street, where the Narcotic Division has its offices.

312

I went over one day after I called Mr. Martin. I had come out on bail sometime in July or August. Mr. Martin told me to go and see Major Williams. I went to see Major Williams, and told him my story. Major Williams introduced me to Mr. Johnson, to whom I gave a statement. Later I met Mr. Clapper, who was introduced to me by Johnson.

I signed a statement which Mr. Johnson took down. After I told Johnson my story, he questioned me. He did not introduce me to Clapper right away. In August, 1937, I told Mr. Johnson that I was guilty.

I told him all about the partnership, and how we got narcotics into the country by means of the Normandie. I told him the names of the partners.

After I was arrested in May, I did not form another partnership with anyone for the sale of narcotics. I sold no more narcotics after that. I did do some business

Louis Ruppolo—for Government—Cross

313

in narcotics for the Government, but I did not sell any for profit. We purchased narcotics for the Narcotic office. We did not sell the narcotics we bought for the office.

Cross Examination by Mr. Kaplan:

I delivered heroin not cocaine, to Mr. Esch during the month of April, 1937, which he had ordered in March of that year. I first met Mr. Esch on April 9th, 1937. He asked me for the cocaine in April, not in March. I met him on April 9th, and he asked me for the cocaine the same month. I never saw him before I met him. I made a mistake as to the date. That is the only mistake I have made in regard to my testimony.

314

I know that Second Avenue runs north and south in the Borough of Manhattan. I don't know whether it only runs as far south as Houston Street. I have been on Delancey Street and Second Avenue. I know it was Second Avenue and Delancey Street because Philip Kronfield's store and a saloon and a store are there. There is also a boat store there. I know there is an intersection at Delancey Street and Second Avenue, but I am not sure. I am not sure of the street, but I am sure of the stores.

315

I came back from Chicago with my wife in April, 1935. From that time until the end of the year, I did not work except gambling. At that time I was living either at Kings Highway or Berkley Place, in Brooklyn. I did my gambling all over Brooklyn and New York. In New York I used to do my gambling at 55th Street and 8th Avenue.

I knew Ralph Liguorio since we were kids. I first

316 *Louis Ruppolo—for Government—Cross*

him him when we used to hang out at Coney Island. I was about 12 years old at that time. I used to hang out on Surf Avenue and see the cheap moving pictures. I never went to the movies with him. I just used to say "hello".

317 I saw Liguorio almost every day. I did not go to school with him. He lived in Bensonhurst. He introduced me to his brother Hankey or Haney. I did not know anybody else, just the brother. I used to wait outside in front of the house. I knew the rest of the family by sight. I don't know what business his father was in. The next time I saw him was at 55th Street in 1935. From the time I first saw him in 1935 to the end of the year, I saw him about a dozen times in different places or passing by with his car. I also went cabaretting with him in 1935. Before I met him on 55th Street and 8th Avenue, I had no business dealings with him. I met him in 1935 sometime between September and December.

318 The conversation that I had with him about packages and an automobile ride was the first one since I had seen him many years ago. I had seen him every year at odd intervals before that from 1925 on. During the time I was in Chicago, I did not see Liguorio. When I came back I met him, and had a conversation about the two packages, after which I took a ride with him.

We went to 380 Broome Street. He went inside and sat at a table with Al Mauro and a few people. The car was parked right in front of the place, and I sat in it. It was a 1932 tan Buick. I don't remember the license number. From there I went to Brooklyn at First Place near Court Street, where we met John Caputo and Ignaro. He blew his horn, and they came out of

the house. From there, we went to President Street and First Avenue, in front of a candy store near the subway. I was introduced to Caputo and Ignaro. I met Caputo for the first time that night, but I had seen Ignaro and Liguorio every day on the corner of 55th Street and 8th Avenue. After that I used to see Caputo.

From Court and First Street, I went to Prospect Place and Fourth Avenue. I waited about 25 minutes for a pick-up car to give him this package. The other car came along and blew his horn, and then turned left to 9th Street. I was told to walk towards 9th Street towards the bridge, and he went into the car. Then I was picked up on 9th Street. I did not see what happened as between the two cars. When I got into the car again, he told me to open the window on my side, and put this package on my lap, and to throw it away if he tells me to do so. That was the package I opened to see what the junk looks like. I opened the package. It was about six inches wide and two inches thick, and wrapped in paper. It was red seal paper tied up with a red string. I did not open the string. I just cut the paper a little in the corner. When I tore off a corner of the paper, I saw some black stuff. I saw a label with an elephant on it. I did not take the outside wrapper off the package. I just ripped the outer package a little bit.

320

321

I was paid for making a case for the government agent. When I said reward, I meant I was being paid every day. I received a reward in a case up in Schenectady. My pay did not depend on how many men were involved in the case. I received \$3 a day and that is all. In this case I did not receive anything, and I don't expect to receive anything.

322 *Louis Ruppolo—for Government—Cross—Redirect*
 Dominick Dimarzo—for Government—Direct

Cross Examination by Mr. Freehill:

I went to New Orleans again after I had been there in September and October, 1937. I don't know if I was there in January of this year. I went down to New Orleans twice. I don't know what I went to New Orleans for, except that I was there to testify, and I did testify. I don't remember when I went down.

323 I testified there that I knew Nicholas Gentile, and had narcotic dealings with him. I was also asked what the dealings were, the dates, the time and the persons. In giving my answer to that question, I mentioned Charlie La Gaipa's name as connected with Gentile.

Redirect Examination by Mr. Martin:

324 This package, (Ex. 14 for identification) belongs to Joe Lago, who delivered it to me at 14th Street and Third Avenue. It consist of ten pounds of gum opium. I was to hold it for him, and left it in my car. The government agents found it in my car when they seized it.

There is no elevated railroad crossing Delancey Street at or near the place where the telegraph office was located.

DOMINICK DIMARZO, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am known as Dominick La Rosa, and as Dick, and

as Diamond Dick. I am one of the defendants in this indictment, to which I have pleaded guilty. I am at present out on probation, pursuant to a conviction for violation of the Narcotic laws.

I met a man named Dr. Swanson at the Willard Hotel on May 5th, 1937. I was introduced to him by a man named Mike Cellentano, or Mike Celli. Celli told me he had met Dr. Swanson in Jacksonville, Florida, and had known him for a few years. Celli asked me if I knew where to get some cocaine for him. I spoke to Dr. Swanson about it and told him that I did not now offhand where to get cocaine. That is all that was said that first night. I met Dr. Swanson at the same place again the next day. Celli was not there, but when he came in, I told Dr. Swanson that I could get 25 ounces of cocaine at \$15 an ounce. Prior to that, Celli had told me that we could buy some merchandise from Ruppolo, and told me to tell this to Dr. Swanson.

326

The next morning at 10:00 o'clock I met Dr. Swanson and Celli at the hotel. We got in a car and drove uptown. Celli had suggested that I keep \$75 out of the money. I put \$300 in Celli's pocket, less the \$75 which I kept. However, I did not deliver any merchandise to them, and I left for California the same morning. I only spoke to Celli and Dr. Swanson about the cocaine.

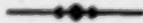
327

I know Jerry Bruno, one of the defendants on trial. I never had any conversations with him. I had a conversation with Celli about him. I had this conversation about November, 1936, at 380 Broome Street. No one else was present.

I know Al Mauro, and received drugs from him during April, 1937. I received 25 ounces of cocaine

328 *Mrs. Penelope Ruppolo—for Government—Direct*

from him in Brooklyn. I don't know the place, but I believe I received it from his wife.



MRS. PENELOPE RUPPOLO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

329 I know the Central Bar & Grill at 55th Street and 8th Avenue. I also know the owner, Sophie Matiatos, also known as Sophie Safera. I received Four Hundred and some odd dollars from her on May 27th or 28th, 1936. I know the defendant Vincent Carreria, with whom I had a conversation after this accident.

After I received the four hundred odd dollars, I had a conversation with Carreria at 141 Mulberry Street in the presence of my husband, Louis Ruppolo. Carreria claimed my husband owed him \$500. My husband denied this, and asked what was the basis of the debt. Carreria said it was for a can of narcotics that my husband had recieved from Al Mauro. My husband, Ruppolo, said he did not know anything about the money, and that Felix Papa had thrown the money away. Carreria then said that I had received the money, and that my husband had better get a gun and get the money, because he, Mauro, owed it to his partner, Jerry Bruno, and if the money was not paid to Bruno, Bruno would break Mauro's head. Mauro told my husband to ask me for the money, and I said I had spent it, thinking that the money was my husband's shylock money. That is all the conversation I had with Mauro.

(Witness attempted to identify Charles La Gaipa, but point out Louis Liguori. The witness identifies

Mrs. Penelope Ruppolo—for Government—Cross

331

Ralph Liguorio.)

I know Felix Papa. He came to my home sometime about January 21st or 22nd, 1936. Papa said during the conversation that if he and my husband continued in the narcotic business which they were in, they would have enough money in a few months or a year at least, to be able to buy a bar and grill. Sometime in February or March, 1936, he came to my house again about 11:00 o'clock in the morning, and asked my husband for \$700. My husband had come home with me the previous evening at 1:00 o'clock in the morning, and brought home the \$700. Papa said that Jimmy the Blond sent him up to get \$700 to lend to Mr. Gentile, as Gentile had gone broke in a crap game and needed the money. My husband gave Papa the \$700 and he left.

332

Cross Examination by Mr. Solomon:

In January, 1936, my husband was a shylock, and also in the narcotic business, I knew that. My husband is in no business today, and neither am I. My husband has not been in business since May 24th, 1937, when he was arrested. I have not been in business since that date, nor have I worked. My husband has not worked or earned any money since 1937, and neither have I, except that he received some money from the government in a Chinese case. I don't know how much he received.

333

I know my husband's brother, Willie Ruppolo. I did not see him last night at 35th Street and 8th Avenue. I have not been at the Central Bar & Grill since last August. I don't know what my brother-in-law Willie Ruppolo does there every night.

334 *Mrs. Penelope Ruppolo—for Government—Cross*

I received approximately \$21 from my husband from the Chinese case. At the time my husband was arrested, people owed him money on loans. After he came out on bail, my husband went and collected some of this money, and we have been living on the proceeds. My husband collected about \$500 or \$600 which was owed to him since May, 1937.

335 I pay \$7 or \$8 a week for rent for one room. It is not a furnished room. Our car was seized by the United States Government, and we did not get it back. My husband has four suits of clothes. At the time my husband was arrested, he had \$480 in the bank.

336 I discussed this case with Major Garland Williams a short time before we came to trial this month. I saw Mr. Williams in March, 1937, while my husband was in jail. At the time my husband was arrested, his bail was \$25,000. When he was bailed out in August, 1937, his bail was \$4,000. He was bailed out by Felix Papa's sister. I knew as far back as January, 1936, that Papa and my husband were partners in the narcotic business. I never kept narcotics in my home. My husband told me he was in the narcotic business in December, 1935. Before that time he was in the shylocking business, and making a comfortable living.

I objected when he went into the narcotic business, and I told him I would leave him, and I did leave him for two weeks. When I came back I again objected, but I kept on living with him. He never gave me any money from the sales of narcotics. My husband received only \$200 for all his narcotic work, of which he gave \$100 to a doctor who treated me for a beating he gave me for defending Jimmy the Blond. I lived with my husband after he beat me up. I am married to him since February 22nd, 1934. That is the only beating I ever

Mrs. Penelope Ruppolo—for Government—Cross

337

received. My husband beat me over Jimmy the Blond. I did not tell my mother that my husband beat me.

Cross Examination by Mr. Drescher:

I had a conversation with Jimmy the Blond about the \$500 sometime after my husband came out on bail. The conversation took place near the end of July, not on May 24th. My husband was arrested on May 24th. The conversation with Jimmy the Blond related to the sum of \$500 that had been thrown away. I don't know when it was thrown away. It may have been thrown away the day my husband was arrested, but I was not there, and can't be sure. Jimmy the Blond did not tell me under what circumstances the money was thrown away. He told me that \$500 had been missing since my husband's arrest. He told me that my husband owed him the \$500.

338

The \$500 was the amount they were supposed to receive for selling a can of cocaine which they obtained from Al Mauro. Jimmy the Blond said that Bruno had been down to the place bothering him for the money. He did not say when Bruno came down, and he said if he did not pay the \$500, he would get his head broken by Bruno. He also said that he had paid \$250 to Bruno, and that he still owed him another \$250. He did not say when or where he had paid the \$250, and he told my husband to go out and get the \$500 with a gun, if necessary, but to bring it down so he could pay Jerry Bruno. He did not say when Bruno started annoying him for the money. I don't know that Bruno was committed in the State Courts from February 11th, 1936 until June 30th, 1936, as a material witness in a proceeding.

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Sladyslaus Boysa—for Government—Direct

SLADYSLAUS BOYSA, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am known as Walter Boysa and I am named as a defendant in this indictment. I pleaded guilty to this indictment, and am now awaiting sentence.

341

I know Lucien Ignaro for about four years. I was in the narcotic business with him beginning with January, 1937. I did what Ignaro told me to do. I went to get stuff for him, and to deliver it to customers.

I know Narcotic Agent Esch. I knew him during the time I was associated with Ignaro. I delivered a can of cocaine to Doc Esch in May, 1937, for which I was paid. After he paid me I went downstairs where I was arrested. The money I received was taken from me by the agents after I was imprisoned.

342

Opium was delivered at my house in the middle of January, 1937, by a man named Joe and another man known as the "Old Man", and by Ignaro. There was 100 pounds delivered at that time, and 100 pounds delivered about ten days later by the same individuals. The "Old Man" I now know as Sanpedro. Joe is known to me as Joe Lago. Louis Colonia was not associated with me at that time.

From January 1937, until the time I was arrested, I was associated with Louis Ruppolo, Felix Papa and Jimmy the Blond. I saw Francois Caputo when the first delivery of 100 pounds of opium was made. I met Joe Lago and Francois Caputo who were in an automobile at 4th Avenue, somewhere around 76th, 77th or 78th Street, Brooklyn. In another car were Louis Ruppolo

and Felix Papa. Ignaro made an appointment for me to take Ruppolo and Papa to my home at 208 Grafton Street, corner of Dumont Avenue. I started to drive to my home, and another car followed mine. This car blew its horn, and I walked back to ask what they wanted. Joe Lago was driving that car, and Ignaro and Francois Caputo were there with him. They wanted to know how to get to my home, and I gave them directions. I got back in my car and went home. I took Papa and Ruppolo up to my house, and I went down into the street and waited on the corner for about a half hour for Ignaro and Lago to arrive. A car drew up and sounded its horn. I recognized Lago and Ignaro in the car. I directed them around the corner and into an alley. Ignaro, the Old Man and Lago got out of the car, and in a trunk in the rear of the car, they took out two bundles containing 100 pounds of opium. Ignaro took one package and we took the other. We walked back to the front of my house, and put the packages in the car of Papa and Ruppolo. I then called out Ruppolo and Papa. They got into their car and drove away. Ignaro and I then went around the corner again, and Joe Lago asked how everything had gone, and we told him everything was all right.

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Joe Lago went away, and we returned to 55th Street and Eighth Avenue in Manhattan. We waited for some time, and Ruppolo came and told us that everything had gone well.

A few days later we made a second delivery at the corner of 85th Street and Fourth Avenue, Brooklyn. Ruppolo and Papa gave Ignaro \$6800. Ignaro took the money and brought it over to a car in which Lago and Francois Caputo were. I then drove Ruppolo and Papa

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Sladyslaus Boysa—for Government—Direct

to my home. We were waiting sometime, and I asked Ignaro why the delay, and he said, "The Old Man is driving the car, and he is very slow." When the car returned we again went into the alley, and then carried two bags of 50 pounds each into Ruppolo's car. Ruppolo and Papa then got into the car and drove away. After assuring Lago that everything was all right, we again returned to 55th Street and 8th Avenue, where Ruppolo was to come and tell us whether everything was all right.

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For my work I received \$140 from Ignaro. I did not know Papa before these transactions. Papa accompanied me at the time I made the sale to Doc. I was in the Hotel Empire, 63rd Street, Brooklyn. In a room were Ruppolo, Ignaro and the Doc, whom I now know as Mr. Esch. Ruppolo and Ignaro asked me to do them a favor, and I said yes. They told me to go downstairs, and telephone back in a half hour, and that he would direct me then to meet him at a certain corner, and that I would then deliver a package to Doc.

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Ruppolo telephoned me at the hotel, and told me to meet him at 63rd Street and Ninth or Columbus Avenues. I met Ruppolo there and he took me over to an automobile and gave me a package. Ruppolo and Ignaro were about twenty feet away, leaning against a wall, and watching the car. I walked back to the hotel, and as I passed them I smiled. Ruppolo was behind me. I delivered the package in the room where Doc was. A few minutes later Ruppolo walked in. He collected some money from Doc and he took me into the bathroom and gave me \$5. Then Ruppolo took me downstairs. A few minutes later I was locked up.

I knew Jimmy the Blond since January, 1937. After the first deal in January, Jimmy the Blond came over

to me at 55th Street and Eighth Avenue in the Central Restaurant, and told me not to talk about the transaction, and I told him I would not.

I know Al Mauro, alias Montana. I don't know him, but I know of him. I talked with Ignaro about him, even before the deals involving the narcotics about six or seven months before January, 1937. Ignaro told me that he once dealt with Mauro and had an argument with him downtown. He told me further that Mauro took a sum of money from him, so that he never went downtown again, and instead dealt with Jimmy the Blond.

350

I don't know Don Alphonso, but in January, 1937, Ignaro told me that he had dealt with him and Willie Ross sometime before. Due to the fact that Ignaro had an argument with Al Mauro, Ignaro did not go downtown any more to deal with Ross or Alphonso.

I know Mike Celli, but I never had any dealings with him in the narcotic business. I don't know Don Lutz, and I don't know Joe Pettrucezi. I had a talk with Ignaro, about Pettrucezi in January or April, 1937.

I have known Louis Liguori for a number of years. I met him in April, 1937, at 55th Street and 8th Avenue. Charlie Morgan was also there. Ignaro had a conversation with them about taking stuff from the Normandie. Ignaro asked Morgan if he would go to the Normandie and take a package from it for \$100. Liguori was present. Charlie Morgan said he would do it.

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Ignaro also at that time had a talk with little John the Frenchman, who owned the merchandise on the Normandie. The Frenchman wanted to know if Ignaro had someone to take it off, and Ignaro said he would find somebody, and he asked me to do it for \$100, but I

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Sladyslaus Boysa—for Government—Direct

refused. Later in the evening Morgan and Liguori came down, and Morgan agreed to take the stuff off the boat. Ignaro and Ruppolo told me later that Morgan took the stuff off the boat.

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I had a conversation with Charlie Morgan in the latter part of April, 1937, at the corner of 55th Street and 8th Avenue. It was after the second time Morgan had taken stuff from the boat. Morgan told me that as he was walking down the street, a car drove over to him. He was pulled in to the car and taken up to the East Side. Merchandise was taken from him, and then he was let out of the car.

I asked him who had been in the car that held him up, and he said a fellow from Harlem called "Big Tom". He further said that "Big Tom" sold the stuff to Willie Brown of Spring Street. I asked him if he was going to do anything about it, and he said, "I can't do anything because they threatened to kill me."

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I know Dominick Vaccaro, known to me as Mimi. I had no narcotic dealings with him between January 1st, 1937 and the time I was arrested. I spoke to him about narcotics when I saw him in the House of Detention.

Ignaro talked to me about the hijacking of the stuff from Morgan the same day that it happened. I was in the restaurant at 55th Street and 8th Avenue. He told me that Morgan had just taken two kilos of heroin off the Normandie, and somebody had hijacked him. At that time he did not know exactly how it had happened. Later on in the day, Ignaro told me that Morgan had told him that he knew the fellow, and that the merchandise had been sold to Willie Brown. Ignaro said that he was going to see somebody downtown and try to have it taken back from the person that had purchased it from

Willie Brown. Later on he told me that he recovered the stuff. He said that he went downtown with Jimmy the Blond to see Joe Pettruzzi. That Pettruzzi got in touch with Willie Brown, and obtained the stuff from Willie Brown.

I know the stuff obtained from the Normandie was sold to Ignaro, Papa, Ruppolo and Jimmy the Blond. I don't know whether it was then resold.

I also spoke to Ruppolo, Papa, Jimmy the Blond and Little John the Frenchman, that is John Vencileoni, about this hijacking affair. I never discussed the hijacking affair with Pettruzzi. I never spoke to Pettruzzi about the matter, nor did I hear anybody speak to Pettruzzi about it.

(Witness identifies Louis Liguori. Witness does not identify Don Lutso, alias Colagerio Iacono.) I don't now any of the other defendants on trial.

Cross Examination by Mr. Solomon:

I entered the narcotic business in January, 1937. Before that time I was a licensed taxi driver. I was approached to enter the narcotic business by Ignaro, whom I had known before January, 1937. Ignaro approached me concerning the business in the latter part of 1936. It was long before Christmas, 1936. Ignaro at that time said that he expected a shipment of narcotics to come in somewhere in Brooklyn. He did not know the exact time, but when it did come, he would let me know, and I would be able to make some money.

I did not ask him what he meant. I was not interested in anything except that I would be able to earn some

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Sladyslaus Boysa—for Government—Cross

money. I did not know whether it was going to be a legal or illegal importation, and I did not ask him about that. The next time I spoke to Ignaro about the matter was in December, 1936, at 55th Street and 8th Avenue. That was where I used to stand with my cab, and when I did not work I used to come around there anyway. He told me he expected the merchandise to come in any day. I did not form a partnership with him at that time, or at any other time. I was never a partner with him in any narcotics at all.

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In January, 1937, he told me the boat had come in, but they had been unable to take the stuff off. He did not tell me the name of the boat. At this last conversation in January, 1937, I asked him how I would make the money. He said I would not have to do anything, just meet him at a certain place, and I would then take somebody to a place. That I would then receive merchandise for other people, and that's all I had to do.

360

The name of the person I was going to meet was not mentioned. The person I was going to meet would take me to meet somebody else. I asked him who these people were, but Ignaro would not tell me. The person I met was Joe Lago. That is not the man whom I called the Old Man on direct examination. The Old Man is Sanpedro. The incident involving the Old Man took place about the middle of January, 1937. It was about the 15th or 16th of the month. I met Sanpedro at the corner of Grafton Street and Dumont Avenue, in East New York. That was the first time I met Sanpedro. I saw him a couple of days later again at the same place, Grafton Street and Dumont Avenue. I never met him again. Those were the only two occasions that I saw him. In addition to myself and Sanpedro, there were also present Joe Lago, and Lucien Ignaro.

The first time that I met Sanpedro, I waited on the corner for Ignaro. A green Pierce Arrow came along, driven by Joe Lago. Next to him was Ignaro, and in the rear of the car was Sanpedro. The next time the same people were present. I never met Sanpedro again, and I never had any personal dealings with Sanpedro. Ignaro told me that his partners in all the narcotic dealings were Sanpedro, Joe Lago, the Old Man, Francois Caputo, and John Caputo. I was not a member of the partnership. I handled two hundred pounds of opium for Ignaro on two occasions in January.

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There were a couple of smaller deals, one of which took place in the latter part of January or the beginning of February. Ignaro and I went down to 59th Street and 4th Avenue, Brooklyn, and met Lago there, and in a couple of minutes later Ruppolo and Papa took me down in a different car. In all the deals which I was involved, the people whose names I have given you were also involved.

The people who were involved with Doc Esch at the time I was arrested in May were Papa, Ruppolo and Jimmy the Blond. They were the New York people who were involved with the Brooklyn people. In connection with Esch business, I met Francois Caputo.

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SOPHIE MATIATOS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am the manager of the Central Bar & Grill which is located at 55th Street and 8th Avenue.

On May 24th, 1937, I handed \$495.00 to Mrs. Ruppolo.

3: 364

Louis Colonna—for Government—Direct

It was the money that the waitress had found in the telephone booth on the same day, and which she had given to me. I recall an incident on that day in which three men were arrested. I knew the men. I have not had any conversation with them since then.

LOUIS COLONNA, called as a witness on behalf of the Government, being duly sworn, testified as follows:

3: 365 *Direct Examination by Mr. Martin:*

3: 366

I am the Louis Colonna that is mentioned in the indictment and I have entered a plea of guilty. I am named in the indictment as Cologna. I know John Vencileoni and have known him for about nine years. He visited me in 1937 at my home when I resided at 404 West 56th Street, New York City. The first time he visited me was April 1, 1937, when he asked me if I wanted to go into the narcotic business with him. At that time, there was no one else present. I had a conversation with him. He said to me, "Louis, do you want to go into the narcotic business with me?" "I have a brother who would send the stuff over to us". I said, "No".

On April 15, Lucien Ignaro came up to my house and asked me if I wanted to earn \$100.00, to take some stuff off the ship. I said, "No". Then he asked me if I knew where he could get Charlie Morgan; that he knew that he was a longshoreman on the French line. I told him that I did not know where he lived, but that if he would go up to 72nd Street, he might be able to locate him there. Lucien asked me to go there for him and I said, "I'll go there and see if I can find him for you". He then said, "All right.

You go up there and I'll be waiting for you on 51st Street. There's a coffee pot there, on 8th Avenue". I left my house on 54th Street and walked up to 72nd Street and Broadway. There I met Louis Liquori, standing near his taxicab on Broadway and 72nd Street. I asked him if he knew where Charlie Morgan was. He asked me why I wanted to know. I said, "Well, Lucien Ignaro wants him, wants to see him, some money involved in it". He said, "O. K. I know about it. Get into my cab and we'll go over to Staten Island". We got into the cab, but I did not want to go to Long Island. I told him that Luciano (Lucien Ignaro) was waiting on 55th Street and he said he would drive me down there. When we got down there, Louis Ruggolo and Lucien Ignaro were standing outside, and Louis Liquori got out of the cab and spoke with them for a short time. I do not know what they said. They entered the restaurant and I went home.

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The next morning, about 9:15, Louis Ignaro came to my house and asked me, "Do you want to make a few dollars?". I said I needed it very badly and asked him what he wanted me to do. He said, "You go down to the French line. That is on 48th Street". The "Normandie" was in that day. He said further, "And watch Charlie Morgan. He is going on that ship and you watch him when he comes out".

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I went down there, but did not locate Charlie Morgan. I met Louis Liquori standing near a candy store between 48th and 49th Streets on 12th Avenue. I asked him where Charlie Morgan was, and he told me that he was on the ship and that he had obtained all the instructions the night before, in the restaurant. These instructions were in a letter written in French given to him by Vencileoni, and directed him to go on the ship

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Louis Colonna—for Government—Direct

with that letter and get the merchandise.

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About twenty or twenty-five minutes later, while we were standing in the middle of the block, between 48th and 49th Streets, we saw Charlie Morgan come out of the pier. He waved at us. He walked up 48th Street to 11th Avenue and hailed a cab. He got into the cab which started toward my house on 56th Street. Louis Liquori and myself followed. We were about two blocks away from the house when Louis Liquori said he would go to the house and see if Charlie Morgan was there. I told him I would remain downstairs. He went upstairs and about three minutes later, he came down with Charlie Morgan. I asked, "How's everything?" Charlie Morgan said, "O. K. I got another \$100.00". He had the \$100. in his hand. I then went upstairs where I found Vencileoni, Louis Ruppolo, Lucien Ignaro and my wife in the bedroom. There was a package on the kitchen table.

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Vencileoni said, "Is everything ready?", and Louis Ruppolo answered, "Tomorrow, we'll make it tomorrow". The Frenchman wrapped the package in a newspaper, took it with him and went home. I do not know where he lived.

The next morning at about 10:30, Lucien Ignaro came to my house and asked me if Vencileoni or Louis Ruppolo had been there. I told him that they had not. About twenty minutes later, Louis Ruppolo came up and asked Luciano if everything was ready. Luciano replied that he was waiting for the Frenchman. Finally, the Frenchman came up with a package in his hand and placed it on the table in the kitchen. When this was done, I walked into the next room about ten feet away from the kitchen. The window was open. I wanted

to find out what was going on. I saw Louis Ruppolo take out some money and count it. There was about \$1,800.00. Vencileoni put the money in his pocket and started to leave.

Louis Ruppolo said, "Wait a minute. We want to see what is in that package first". They then went into the parlor and there Louis Ruppolo said that they were going to take three ounces out of the package. They took three ounces and then got a scale and Louis Ruppolo used it. They opened up the package and weighed an ounce at a time. They filled three envelopes and each one got three ounces. Louis Ruppolo gave Lucien Ignaro three envelopes and told him to give them to my wife, Angelina Colonna. I told them to give them to me. I hid the envelopes under the oilcloth in the bedroom. Louis Ruppolo then wrapped the package and went out. At that time, John Vencileoni asked Lucien Ignaro if he wanted to go to the bank so that he could send the money to France. I did not see them again that day.

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About four days later, Lucien Ignaro and Louis Ruppolo, who was also known as "Louis the bum" came up and asked me for two ounces which I gave them.

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The next day they came up for the other ounce and I gave it to them. That was on April 14th, 1937. After that I had a talk with Charlie Morgan.

I recognize this picture (Ex. 15 in evidence) as that of Charlie Morgan.

I worked with Charlie Morgan in the cab business.

I recognize Louis Liquori in the Court room.

Afterwards I also had a conversation with Louis Liquori. Both of them came to my house with a girl

Louis Colonna—for Government—Direct

about five days later. We had some sandwiches and some beer and they told me that they had divided the money. Louis Liquori got \$60.00 and Charlie Morgan got \$40.00. After that, they visited my house again. My recollection would be that it was about the 2nd day of April. That is the nearest that I can remember. It was about a week after the first visit. There was no one else with them at that time, except the girl. We had a conversation about narcotics. Charlie Morgan asked if there was any more stuff coming over. He said he wanted some money; that he was broke; and that he already spent the money that he had made. I told him that I did not know. He got in touch with Lucien Ignaro and he wanted \$10.00 or \$15.00. I was present on 55th Street when Lucien Ignaro loaned him \$10.00. Ignaro said that the next time when Charlie Morgan took the stuff for him, he would take the \$10.00 back. I had no conversation with Louis Liquori at that time. The three of them went to a dance hall and that is why they asked for \$10.00. Louis Liquori was the one who had asked for the \$10.00. I had been holding \$200.00 of Lucien Ignaro's money and he directed me to give the \$10.00 to Liquori.

Thereafter, they visited my house again and that was on the occasion of the two kilos. I am not quite certain about the date, but I know it was about eleven days later. On the occasion of that visit, I was walking down 8th Avenue about 6 o'clock at night. I met Louis Liquori, Charlie Morgan and the girl. They asked me if I knew where Luciano was. They told me that Luciano had already called them that day and that they had to make an appointment with him. I replied that I was looking for him myself and that the only thing I could do was to wait. After a while, we met Lucien Ignaro

Louis Colonna—for Government—Direct

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and Louis Ruppolo. We had been on 56th Street and 8th Avenue, and I suggested that we walked down to 53rd Street. There was a restaurant on that corner. We met Lucien Ignaro there.

They talked about going on the ship the next day to get two kilos of heroin. Charlie Morgan said that he did not want \$100.00; that he wanted \$150.00. Lucien Ignaro replied that they were not making any money on the stuff and that perhaps after a while; they would give him a little more. So they agreed to take the two kilos off for \$100.00.

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The next day at about 9 o'clock, Luciano told me to go down to the ship and watch. I did go down to the ship and I found Louis Liquori waiting for me. We had made all the arrangements and an appointment to meet each other the day before. When I got there, I asked Louis Liquori where Charlie Morgan was. He told me that the last time he saw him, he was shaping up as a longshoreman, trying to get work so that he could get on the ship. I then inquired whether he had gotten on the ship. Liquori told me that he did not know.

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We waited for about thirty-five or forty minutes and finally we saw Charlie Morgan. It was raining that day and we stayed in an empty store between 48th and 49th Streets on 12th Avenue. Charlie Morgan then gave us the signal. Instead of going through 48th Street as he had done the previous time, he went straight downtown as far as I could see. At about 46th Street, he turned left and we lost sight of him.

We saw him again about one hour later. He was standing near my house. I had told Louis Ruppolo to go upstairs and I waited downstairs. Charlie Morgan

Louis Colonna—for Government—Direct

then came up looking pale and worried. I asked him what the matter was. He said, "I got hijacked". I told him that he couldn't get hijacked. I asked him what he meant and told him he better come upstairs and tell Lucien Ignaro and Louis Ruppolo; that he could not go away and that he would have to come upstairs with me. I went upstairs and we waited there. Vencileoni and Luciano were there and they were mad. When we reached the upper floor, I said to Lucien Ignaro, "They stole the stuff on Charlie Morgan". Louis Liquori was also there. I told Luciano about Charlie Morgan in French. He was mad and got a hammer and Vencileoni got a knife. I said, "Wait a minute. You ain't going to get started to do this thing in my house. If you are going to do anything like this, you better go out". I thereupon stepped them.

About twenty minutes later, Louis Ruppolo came up and Charlie Morgan was sitting on a chair. Louis Ruppolo went up to Charlie Morgan and said, "What did you do with that stuff?" He replied, "I don't know". "They hijacked me. What do you want to know off me? Why didn't you give me protection?" Ruppolo said, "You are going to tell me who took the stuff". Charlie Morgan again said that he did not know. Finally, Louis Ruppolo hit him on the chin and Vencileoni started jumping on him and Lucien Ignaro had a hammer. They said to Charlie Morgan, "Come on. Get going. You are coming downtown and get into this car". Louis Ruppolo and Lucien Ignaro took Charlie Morgan out of my house. I did not go downtown with them. About twenty-five minutes later, I was standing downstairs when Louis Ruppolo came up to me and said, "Everything is all right again. Could I use your room again? He asked to tell me everything". I said, "Listen, if

you are going to start no war up there, all right. But you will get me thrown out". He told me that it would take only five minutes. I went upstairs by myself because I wanted to see what was going to happen. Ruppolo and Morgan went into the room. I did not hear what they were saying but when they came out, Ruppolo told me everything was all right. He told the Frenchman not to worry; that he would get his stuff back; they then left the house.

At that time, Liquori remained downstairs and had been downstairs when they had taken Charlie Morgan away in the car. Vencileoni had also been downstairs. At that time I had a conversation with Liquori and he said to me, "Listen, Frenchy, don't worry; I called the place uptown; they are going to get the stuff back". I said, "You are getting the stuff that was hijacked". He replied that he knew nothing. He said, "What are you worrying about? Everything is going to be all right. Don't worry. They ain't going to make trouble for you". They then went away, and I did not see them till the next day.

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Lucien Ignaro and Louis Ruppolo told me they had gotten the packages. The only thing they had lost on the deal was money. The Frenchman lost about \$800.00 on the deal.

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I did not see Charlie Morgan or Louis Liquori again. I had many further conversations with Lucien Ignaro in relation to this incident of hijacking. He told me the next day that they knew a big man downtown and that he would straighten out the whole thing; that his name was Paduce; that he was a big man downtown. I did not know him.

I destroyed the scales that were in my house after

Louis Colonna—for Government—Cross

Louis Ruppolo, Lucien Ignaro and Walter Boysa were arrested.

Cross Examination by Mr. Zelenko:

On April 14, when I met Ignaro, he said he wanted me to locate Charlie Morgan. I was looking for Charlie Morgan when I met Louis Liquori, whom I had known for a long time. Louis Liquori used to visit my house from time to time. He had rented a room in my house at 121st Street and 8th Avenue. I knew his family and his family knew me.

When he saw me that day, while looking for Charlie Morgan, he told me that Charlie owed him about \$10.00. I don't know whether he was going to look for Charlie Morgan in order to get some of that money. Louis Liquori then found Charlie Morgan.

After the first shipment of narcotics was taken off the boat, I saw Charlie Morgan and Louis Liquori coming down the street near my house. Four days later, they came back again. Louis Liquori told me that they had divided the money; that he got \$60.00 instead of \$40.00. He did not tell me that the \$60.00 was part of some money that Charlie Morgan owed him.

I have pleaded guilty to this crime. I have not pleaded guilty to any other crime. I was never found guilty or convicted of any other crime. I do not know whether or not I am going to jail; it is up to the Government.

On Tuesday of last week, I pleaded guilty. I did not speak to Mr. Martin before I did so. Neither did

Louis Colonna—for Government—Cross

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I speak to Mr. Artis nor any of the other agents in this case. I did so of my own free will. I said I wanted to plead guilty. My lawyer spoke with the Judge and told him I wanted to plead guilty, and that is all there was to it.

I did not speak to Mr. Martin since then or to any of the agents. It is of my own free will that I am testifying and telling the truth because I have been suffering in the House of Detention for four months. It took me four months to decide to tell the truth. My wife was arrested also, and she was not present when I told Mr. Martin that I was going to testify. I told her to plead guilty also, because we were guilty of what took place in our house. I earned only \$5.00 out of this entire conspiracy. When Ignaro asked me to go into the narcotic business, I knew I was going to break the law. He did not tell me how much money I was going to get. I got the \$5.00 from Louis Liquori for going down to the ship with him. I got no more money. I wanted to be a nice fellow, that is how the stuff got into my house. There were certain arrangements for them to use the house about which I could do nothing. I had to allow them to use the house because Lucien Ignaro and John, the Frenchman, always threatened me. I was afraid of all of them. I got into this business because I just wanted to avoid trouble. Many times they came up to my house and broke my chairs and my dishes. They were jealous because I lived with Ignaro's woman. That woman is not my wife, although I live with her as such. She is the one who is indicted here, as Mrs. Colonna.

I never had a fight or an argument with Louis Liquori.

In 1936, I was a taxi driver. Since then I bought

Louis Colonna—for Government—Cross

194 a fruit stand for \$585.00 in Hoboken. I knew that Ignaro, John the Frenchman and Louis Ruppolo were selling the stuff and that they would give me a few dollars. I did not receive any part of the \$1,700.00 which was passed in my house.

95 I have testified that Charlie Morgan was taken into a room by Louis Ruppolo, who hit him with his fist. I never saw Louis Liquori on the ship. While I was waiting with him for Charlie Morgan to come off the boat, he did not tell me that he was waiting for Charlie to pay him the \$10. which he said Charlie owed him. I had been sent there to watch Charlie Morgan. Ignaro also told me that Louis Ruppolo would wait there also.

96 The second time that Charlie Morgan went on the boat, Louis Liquori did not go with him, but waited with me on the pier. Charlie Morgan walked about half a block ahead of us and continued to walk away while we stood on the corner. Morgan was supposed to go through 48th Street, but he started to walk down to 46th Street. When he turned to go downtown, we were two blocks away from him, but did not follow him in spite of the fact that he walked in a different direction from that in which he was supposed to. Liquori and I then walked back to my house. It took us about fifteen minutes to walk from 48th Street to 56th Street. I sent Louis Liquori upstairs to see if Charlie Morgan was there. While I remained in the entrance of the house, I saw Charlie Morgan approach the house and I asked him what was the matter. The two of us then went upstairs. When we got there, we found Louis Liquori, Vencileoni, Lucien Ignaro and Louis Ruppolo. I prevented Ignaro from hitting Morgan with a hammer, and I also prevented Vencileoni from using a knife on Mor-

Louis Colonna—for Government—Recalled—Recross

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gan. Ruppulo hit Morgan with his fist but no one hit or threatened Liquori in any way although Liquori was near Morgan.



LOUIS COLONNA, recalled as a witness on behalf of the Government, testified as follows:

Recross Examination by Mr. Zelenko:

I testified this morning that I had never been convicted of a crime other than the crime in the instant case in which I pleaded guilty. That testimony is the truth, and it is true as all of the other testimony which I gave today. I was a taxi driver on March 12, 1932. I know I had a fight in the street on that day, was brought to night Court and then sent home. I do not know if the Judge found me guilty. I had struck a man in self defense and was arrested. I was found guilty and sentence was suspended. I was convicted for fighting. I do not know what assault means. At that time, I was convicted of disorderly conduct and sent home. I never thought it was a crime. I am not in jail now. I am now living with Angela Perelli. I know a woman named Louise Colonna. That is not the same woman. Louise Colonna is my wife. I married her about 1923 of 1924 and I have had two children with her. I am not living with her at the present time. I was not divorced from her.

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By the Court:

I do not know a man by the name of Morris Pairo. I do not know a policeman named Faley. The Court in which I appeared in 1932 is on 54th Street between 8th

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Jack Bloomfield—for Government—Direct

and 9th Avenues. At that time, I lived on 3rd Avenue. I believe it was No. 742. I do not remember if I ever lived at 1038—3rd Avenue. I was born in Algiers and came to this Country in 1913.

(Defendant's Exhibit B received in evidence.)
(Record of Conviction of Colonna.)

By Mr. Zelenko:

401

I was asked about a crime in my previous testimony and I explained that I was never convicted of a crime. I know what the truth is, but fighting for self protection is not a crime to my knowledge. One of my children is twelve years old. The other is almost eleven.

JACK BLOOMFIELD, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

402

I am a salesman of men's wear for Philip Cromfield at 4 Delancey Street, New York City, and have been so employed for six years.

This paper (Ex. 16 in evidence) in my own handwriting, is a sales slip for six shirts and bears the date April 1, 1937. At the time that I wrote this paper, there were other salesmen present. I do not recall whether there were any customers present.

(Exhibits 16, 17, 18 received in evidence.)

The sales slip describes the merchandise as six shirts at the price of \$6.00 each. Exhibit 17 is a photostat

Walter J. Kopfer—for Government—Direct

of a page in an account book. Exhibit 18 is a receipt.

This (Ex. 19 for Identification) is a picture of Mr. Gentile who was a customer in my store occasionally. I have no individual recollection of the person or customer who was represented by the sales slip and receipt relating to the six shirts at \$6.00 each.

WALTER J. KÖPFER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

The last time I was in New York was about one year and eight months ago. When I returned to Pittsburgh, I travelled by bus. I boarded it at West 50th Street. On route, I had a conversation with one of the passengers.

I recognize the person whose likeness is on the photograph. (Ex. 20 for identification.) I saw him in Pittsburgh in a narcotic office and also on the bus. That was in January, 1937. This man did not tell me what his name was. I have not seen him since the time when we were on the bus together. I see him here now.

Witness identifies the defendant Alphonso Attardi.

The Court: The Court will direct that the record shows that the photograph, Exhibit 20 for identification, produced by the Government is not claimed to be a photograph of the defendant, Alphonso Attardi.

Joseph Mazer—for Government—Direct

Joseph Mazer—for Government—Recalled—Direct

JOSEPH MAZER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am employed by the Western Union Telegraph Company in the capacity of manager at 18 Delancey Street and have been so employed for the past thirty-four years.

I recognize this paper (Ex. 21 for identification only). I saw it before about 3 months ago in my office it was issued by me as manager. I saw Exhibit 22 for identification about three months ago. I did not see Exhibit 22 before I prepared Exhibit 21. I don't know who prepared Exhibit 22 for identification.

JOSEPH MAZER, recalled as a witness on behalf of the Government, testified as follows:

By Mr. Martin:

The endorsement this check (Ex. 55 in evidence) is mine. It was cashed by the bank upon my signature. I do not know the man for whom I endorsed it. I did not know him at the time I endorsed the check. The identification was given to me and I paid it on the identification. I have not seen the man since that time. Someone came in and identified himself, and I gave him this paper. I have no recollection of the circumstances under which he made the identification. The person who presented the check for endorsement spoke to me at the time of the presentation. I do not remember

Thomas F. Saver—for Government—Direct

409

his description. I do not know whether he is white or colored. I cannot recognize or identify anyone in the Courtroom.

The last time I spoke to anyone about this case was to Mr. Olivera about one hour ago. The only person that I recognized in the Court room was Mr. Olivera.

THOMAS F. SAVER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

410

Direct Examination by Mr. Martin:

I am employed by the Narcotic Bureau of the Treasury Department in the capacity of agent and have been so employed for about seven years. During that time, I took the course and instruction at a school maintained by the Government in Detroit. The course which I studied was that of supervising telephone wires and also installing taps on telephone wires. I have heretofore installed taps on wires and have testified as such a technician in various Courts.

411

I am acquainted with the premises 314 West 55th Street, New York City, which is located between 8th and 9th Avenues. I know that there was a telephone in the Central Bar & Grill which is located at the corner of 55th Street and 8th Avenue, and I believe that the telephone number is Circle 7-9352.

With respect to that telephone, I installed a supervising wire and placed it in a room at 314 West 55th Street. That is known as a listening post. I did this on March 10, 1937. I do not think that I removed it.

412

Charles S. Johnston—for Government—Direct

CHARLES S. JOHNSTON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am an agent in the Narcotic Bureau of the Treasury Department and have been so employed since 1926 with the exception of two and a half years.

413

During the months of April and May, I was assigned to supervising the general telephone located at the Central Bar & Grill restaurant, 55th Street and 8th Avenue, the number of which is Circle 7-9352. My listening post was located at the top floor of a building at 314 West 55th Street. I continued to supervise that wire until May 1st. I was not the agent assigned to listen on that wire. My assignment was to street work in that vicinity. Agent Vladek was assigned to listen. I was on that wire sometimes and I recognized the voice of one person who spoke. That person was the defendant, Louis Ruppolo.

414

Q. Did you make any notes of any conversation that you heard?

Mr. Edelstein: If the Court pleases, merely for the purpose of record we object to any telephone conversation heard by this witness. I am aware that the Supreme Court this far holds that it only applies to interstate. We contend that it applies to intrastate and merely for the purpose of record, we want to reserve that objection.

The Court: Well, other Judges in this Court, since that decision by the United States Supreme

Charles S. Johnston—for Government—Direct

415

Court, have held that it does not apply to intra-state.

Mr. Edelstein: I am aware of that.

The Court: And, therefore, I will follow the rulings which have been made by my colleagues in this Court.

Mr. Edelstein: You will note our specific objection to all of this testimony to which we take an exception.

I was accompanied by Agent Falotico when I heard certain conversations over the wire. This agent made notes and I have issued those particular notes at that time. I knew that Agent Falotico delivered those notes into our office and a typewritten copy was made therefrom. I have read the typewritten transcript and found it to be correct.

416

I am the author of this paper (Ex. 23 in evidence) which consist of typewritten and script. They are my original notes, but not of conversations over that particular phone. These notes are notes from an intercepted phone conversation on another telephone, from a phone located in room 427 of the Cornish Arms Hotel, New York City. At that time, narcotic agent Esch and myself were occupying that room in the Cornish Arms Hotel. I heard the voice of Agent Esch on the telephone as I was present and in the same room when he was calling and when he received the call. I recognized the voice of Louis Ruppolo as the one who was making the call.

417

418

Salvatore Falotico—for Government—Direct

SALVATORE FALOTICO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

419

I am an inspector of customs and have been so employed by the Government for eight years. During the months of March and April, I listened in on the telephone wire that was in the Central Bar & Grill located at 55th Street and 8th Avenue. I made notes of what I heard. I recognized one voice on the telephone and that was the voice of Louis whom I later found to be one of the defendants in this case. He never used his last name over the telephone, but I have since learned his name. I was able to recognize the voice because of the fact that he called up practically every day and later, I met him in person and spoke with him. Also during the progress of these conversations, I had occasion to see him in the restaurant on 55th Street and 8th Avenue where I heard him talk.

420

This paper (Ex. 24 in evidence) is in my own handwriting and was made by me during the month of March, 1937, while I was in a room at 55th Street near 8th Avenue listening to a telephone conversation at a telephone station in a restaurant on the corner. I made these notes in longhand immediately after overhearing the conversation which was in English. I speak and understand Italian. I do not speak or understand French. I have since examined these notes and they are a correct record of the aforesaid conversation. I did not write down everything that was said. I just made brief notes and then remembering what had just been said, I filled in and made a statement of what I heard.

Cross Examination by Mr. Solomon:

While I was listening in to the telephone conversation, I used an earphone. I did not write down word for word what I heard but I would make abbreviated notes which I was not taking in shorthand. These are the abbreviated notes written in the margin to the left of the full transcript. While I was taking these notes, I was not able to abbreviate every word that I heard in that conversation. To some extent, I had to rely on my memory. As soon as the conversation was finished, I made the completed notes. I followed the same procedure in all the conversations to which I listened in on the tap. I do not have any notes in which my abbreviations contain the entire and exact conversation. The handwriting on the first page of this paper showing the dates and the time of the conversation is not mine. I believe it is that of my superior officer. After I wrote a conversation out in longhand, I turned it over to someone in my department.

422

At the conclusion of each conversation in the notes there is its date and time. I had my watch in front of me as each call came in.

423

At the time that I was making these abbreviated notes from the tap, I did not know the person who was talking. At a subsequent date, I met one of the persons. That was after I had listened in on two or three messages. I was not introduced to this person. He was pointed out to me by another agent. However, I did meet him in person last week in Court, and at that time, I recognized his voice as being the same person whom I heard over the telephone. I did not put any of my personal specifications into these notes except that if the person speaking had

Louis Palier—for Government—Direct

an unusual accent, I would make a note of it.

The first time that I heard the voice of the person whom I met last week was over the telephone on March 10, 1937. He used the telephone several times each day until the 31st of March, 1937, and that was the last time that I made any notes on the tap. I recognized his voice although I did not hear it from the 31st of March, 1937, until last week.

✓ (Government's Exhibit 24 received in evidence.)

(Objection overruled—Exception to defendants.

LOUIS PALIER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am an agent of the narcotic bureau of the Treasury Department, and have been in the service for six years. I understand French. I took a course in the installation of mechanical devices affecting telephone wires at the Government's school maintained for that purpose in Detroit, Michigan. For the past five years, I have installed taps on telephone wires and have testified as a witness in a Court of Record with respect to such installations. On April 22, 1937, I installed a tap on a telephone wire in the Willard Hotel and also assisted in installing a dictaphone in a room occupied by Agent Esch on the same day. From time to time, I supervised either or both of these wires particularly on two occasions. The dates of both of these occasions were April 22 and April 27, 1937. Upon overhearing conversations on the dictaphone,

Benjamin Groff—for Government—Direct

I took them down in shorthand and later wrote them out in longhand.

The telephone conversations appearing on this paper (Ex. 25 in evidence) are in my own handwriting. They are my shorthand notes and they have my initials (L. P.) on them. From time to time I was relieved or assisted by other agents, including Agent Benjamin Groff. I have compared my longhand report with my shorthand notes and verified their correctness.

BENJAMIN GROFF, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am an agent of the Narcotic Bureau of the Treasury Department and have been so employed for about three and a half years. In April, 1937, I assisted in supervising a telephone wire, the telephone number of which was Endicott 2-6900. That telephone was located in the Willard Hotel at 76th Street between Broadway and West End Avenue in a room which was occupied by Agent Esch. I overheard a telephone conversation in which I recognized the voice of the defendant, Louis Ruppolo.

By the Court:

I knew Louis Ruppolo for the first time two or three weeks before this conversation. I had occasion to follow him and Ignaro in the vicinity of 55th Street and 8th Avenue. On one occasion, I followed them from that place all the way down to 14th Street. I was very close behind them and I could hear them talk. They were talking partly in English and partly in a language which seemed to me to be either Italian or French. The con-

430

Benjamin Groff—for Government—Cross

versation which I heard over the telephone was mostly in English.

By Mr. Martin:

I did not recognize the voice at the other end of the telephone. I did recognize the voice of Agent Esch who was in that room and upon hearing these conversations, I wrote them down in longhand.

431

Portions of Exhibit 25 in evidence contain some of my handwriting and these are the notes I made as I have just described. It also contains records of conversations that I heard, other than from the telephone taps. It contains records of conversations in the room where Agent Esch was with Ruppolo and Ignaro and a person that I recalled, named "Dick". The conversation took place in room 65 and I was in the adjoining room, 66. They were overheard by me through a microphone which was part of a dictaphone and I took the same action upon these conversations as I would on the telephone. They are likewise reported on this paper.

432

Cross Examination by Mr. Drescher:

In regard to the name "Dick" of which I have just testified, I had never spoken to him before or heard him speak on any occasion prior to the conversation just mentioned by me. I have heard him speak since. It was about two weeks ago in the office of Assistant District Attorney Marks. The conversation in which he took part in the Willard Hotel took place in the latter part of April, 1937.

Benjamin Groff—for Government—Recalled—Cross

BENJAMIN GROFF, recalled as a witness on behalf of the Government, testified as follows:

Cross Examination by Mr. Drescher:

These sheets (Ex. 25, in evidence, A to H) are not the only ones I transcribed by conversations, I overheard. I typed these various sheets from the original notes that I took at the time of listening. My original notes are not annexed to these sheets.

I did not find any of the original notes for these sheets (Ex. 25 in evidence). With reference to this exhibit—on certain occasions, I took testimony over the dictaphone, —also by tapping telephone wires, which are contained in these sheets. The dictaphone was located in room 66, next door to the room which was rented by Agent Esch. If other persons were in the room with Agent Esch, I did not use the doorway. The only knowledge that I had of the identity of persons in the room with Agent Esch was by virtue of hearing the conversation. On May 6, 1937, certain persons were next door and I heard them talk over the microphone. At that time I also had a listening post on the telephone in the same room. On these sheets I have recorded certain microphone conversations and then a telephone call. However, I was working only one mechanism at the time. Certain dotted lines between excerpts of the conversation which appear on the exhibit are used to connote conversation which I did not transcribe.

I have already testified that I know Louis Ruppolo's voice and that I have heard it on different occasions so that I am able to identify it. As to Tomaso whom I called "Dick", I had not heard him talk prior to May 6, 1937, when I heard the conversation over the microphone. The

436

Benjamin Groff—for Government—Recalled—Cross

only knowledge I have of his identify was that he was referred to as "Dick" and "Diamond Dick". I did not see that man from May, 1937 until March or April, 1938 when he appeared at the office of Assistant District Attorney Marks. That was sometime in March or April of 1938. I was in Mr. Mark's office in the regular course of my business. The conference took about fifteen or twenty minutes. I did not speak directly to him but he answered questions from Mr. Marks and myself. I did not hear him speak prior to May 6, 1937, and I did not hear him speak subsequently thereto until March of 1938. I, therefore, cannot be positive in identifying his voice.

437

With the exception of Agent Esch and Louis Rappolo the only other person whose voice I could recognize on the telephone conversations was that of Mike Celli. As to the phone calls which were made out of the room, I could not recognize the speaker on the other end of the wire. I do not speak Italian. I have heard Celli speak Italian.

By the Court:

438

I transcribed my original notes on these sheets (Ex. 25 in evidence, A to H) the next day after I heard the conversation. I did not add anything that was not in the original notes.

By Mr. Drescher:

Nor did I omit anything.

Emery W. Clapper—for Government—Direct

439

EMERY W. CLAPPER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a Federal narcotic agent and have been so employed for about eighteen months. On September 29, 1937, I took a trip to New Orleans, Louisiana, with the defendant, Louis Ruppolo. We remained in New Orleans about four days. I know a man named Tony Lima. I saw him there at that time at 701 North Broad Street, and had a conversation with him. That was in the afternoon of September 30, between 5:15 and 6 o'clock. This was in the Arcket Bar. There were also present, Louis Ruppolo, Tony Lima, Enzy Pecarara and several others who were unknown to me. Lima came into the restaurant in response to a telephone call from Enzy Pecarara. He shook hands with Ruppolo. They had a conversation and I heard portions of it which was in Italian. I could not understand the Italian part but I heard them refer to "big-nose Charlie" and to "Zio Cola" concerning ten pounds of gum-opium that Ruppolo had sold to Lima, also two kilos of heroin. Lima said that he had part of the heroin and that it was very good and he had been selling the other stuff. Lima remained there for 50 minutes. I know one of Lima's daughters but she was not there at that time.

440

441

I know Nicholas Gentile. The person on this photograph (Ex. 20 in evidence) is Tony Lima. That is the same person concerning whom I have just testified. I did not see Cola Gentile in New Orleans at that time. I saw him there later, after his arrest on October 5. I did not have any conversation with him at that time. I recognize this photograph (Ex. 19 for identification) as that of

442

*Emery W. Clapper—for Government—Direct**Emery W. Clapper—for Government—Recalled—Direct*

Nicholas Gentile. I had several telephone conversations with Mr. Lima. These calls were made by Ruppolo on October 1, at 6 P. M. Ruppolo called at Jackson 9004 in New Orleans.

By the Court:

I was present when Ruppolo used the telephone and I heard him give that number. I heard a lady's voice on the other end. I heard Ruppolo ask for Mr. Tony. I have never heard Gentile talk. Neither did I ever hear Lima talk. I never had any conversation with them, except at the bar.

Direct Examination by Mr. Martin:

The conversation at the bar to which I refer was before the telephone call. The person who was speaking sounded like Lima. I heard Ruppolo ask if Mr. Gentile had come in from Texas yet. The balance of the conversation was in Italian.

444

EMERY W. CLAPPER, recalled as a witness on behalf of the Government, testified as follows:

By Mr. Martin:

I am a Government Narcotic Agent and have been so employed for about fifteen months. I am stationed at Houston, Texas. I know a woman named Kathryn Phillips who is a defendant in this case. I saw her on July 14, 1937, at 2602 Avenue E, Galveston, Texas. At that time, I told her that I was a dope peddler and I purchased an ounce of heroin from her. She told me she had a New

Emery W. Clapper—for Government—Recalled—Direct 445

York connection and she would introduce me to him the next time that I came to Texas. I did not use my right name when dealing with her. I used the name Joe Martin.

On July 27, I went to Galveston, Texas and told her I wanted 5 ounces of heroin. She introduced me to a man named Frank whom I know as Anthony Virzi, as her connection. I then made arrangements to have future deliveries of narcotics made to Waco, Texas.

On August 3, I telephoned her from Waco, Texas and requested that Virzi deliver 15 ounces of heroin to me. The next day, he called me and I told him that I wanted 15 ounces of heroin. On August 5, he delivered the drugs to me. And I made arrangements to have him call me at the Cowle Hotel, in Temple, Texas, on August 11. 446

On August 5, Virzi came to my room at the Roosevelt Hotel in Waco, Texas. We both walked out on the highway whereupon he delivered the narcotics to me.

(Stipulated between counsel for the Government and counsel for the defendants that Government's Exhibit 62 in evidence was sent from Waco, Texas to Galveston, Texas by a person known as Virzi in the indictment.) 447

On August 13, 1937, I met Virzi at the Roosevelt Hotel in Waco, Texas, in the morning. Later he delivered 15 ounces of heroin to me at the intersection of the Marlin and Dallas Highway. I followed him back to town and I saw him pick up Simoneini. On August 14, 1937, I saw him in Houston, Texas. On that occasion I purchased 5 ounces of heroin from him. In Houston, I had registered at the Rice Hotel. Virzi met me there and we went to South Main and 5th Avenue. He thereupon handed me 5 ounces of heroin. He told me that I could com-

448 *Emery W. Clapper—for Government—Recalled—Direct*

municate with him at 2002 Market Street, Galveston, Texas. He said that the man who owned the bar at that address was named Joe and was his partner. That if I could not reach him directly, to communicate with this man Joe. Those premises were known as the Schooner. He told me to call Joe anytime I couldn't reach him. I subsequently met Joe on the 5th of October, after he was arrested. I recognize and identify him in the Courtroom as Attansio.

449 This (Ex. 48 in evidence) is a picture of Biaggio Angelica. I have known him for about 18 months, and have seen him in the company of Virzi on two or three occasions,—during the time I was conducting an investigation in Houston. He was not present when I ordered or received narcotics from Virzi.

On September 14, when I bought morphine from Virzi, he told me that if I would take as much as 15 ounces, he would introduce me to Angelica and I could deal directly with him. However, he never did this.

450 I recognize and identify August Simoncini in the Court room. I saw him in the company of Virzi on August 12 in Waco, Texas, about 4 months after Virzi had delivered narcotics to me. I had a conversation with him after his arrest in a jail in Galveston, Texas. Besides the drugs Virzi gave me a little slip of paper. At the time he gave me the paper, he told me that man was his partner and I could call him when I couldn't get Virzi.

I recognize and identify the defendant Vincent Gentiluomo. I first saw him while he was buying narcotics from Kathryn Phillips. I saw him near the Schooner. At that time I had no conversation with him. On one occasion Attanasio was with him. Gentiluomo owned a

Emery W. Clapper—for Government—Recalled—Direct 451

package shop right next door to the Schooner.

I also know the defendant Attardi and Vincent Di-Maggio. I recognize and identify the defendant Di-Maggio. I first saw him near 3502 R $\frac{1}{2}$ Street, Galveston, Texas. That is where Alphonso Attardi lived. I had no conversation with him. I never saw him in the company of Virzi or Angelica.

I saw this package (Ex. 63 in evidence) in Galveston, Texas, on July 14, 1937. I received it from Katherine Phillips. After I received it I turned it over to Inspector Williams in the Narcotic Bureau. It has two inner packages (Ex. 63 A and B.). 452

I received this (Ex. 64 in evidence) on July 27, 1937, from Katherine Phillips and Anthony Virzi. I turned it over to Inspector Williams at the Houston Narcotic Office. It has 5 inner packages (Ex. 64 A to E) my initials are on all the smaller packages.

These 15 packages (Ex. 65 A to O in evidence) contained in this package (Ex. 65) were given to me by Virzi on August 5. I turned it over to Earl Smith, a narcotic Agent in San Antonio, Texas. 453

These 15 small packages (Ex. 66 A to O in evidence) contained in this package (Ex. 66 in evidence) were received by me from Anthony Virzi on August 13, 1937, and I delivered them to C. D. Wiggins, a Narcotic Agent in Houston, Texas.

These 5 small packages (Ex. 67 A to E in evidence) contained in this package (Ex. 67 in evidence) were received by me from Anthony Virzi on August 14, 1937, and I thereupon turned them over to C. D. Wiggins. The small packages all have my initials on them.

454 *Emery W. Clapper—for Government—Recalled—Cross**Cross Examination by Mr. Kahn:*

I have been working in Galveston for about one year. I saw the defendant Leo Attanasio in Galveston about three or four times in the Schooner. Next door to the Schooner there is a package store which was conducted by Mr. Gentiluomo. I was in the Schooner three or four times to make observations. I saw the defendant Attanasio talk to various people. I never heard him talk to any of the other defendants. I never saw any narcotics in his possession nor did I ever hear him talk to anyone concerning narcotics.

Cross Examination by Mr. Drescher:

I had a talk with Mrs. Phillips in which she mentioned a New York connection with certain Italians. She did not tell me the names of the Italians at that time. Subsequently, she introduced me to Anthony Virzi. She told me about the others on September 8, 1937.

Cross Examination by Mr. Solomon:

I first saw the defendant Gentiluomo in his package store in the month of August, 1937. His store is around the corner from the Schooner. I did not buy any narcotics from him nor did I ever discuss the subject with him, except after his arrest. I never bought nor did I ever try to buy any narcotics from the defendant Attardi.

Emery W. Clapper—for Government—Recalled—Cross 457

Cross Examination by Mr. Shapiro:

I never bought nor received any narcotics from the defendant Simoncini.

By Mr. Martin:

On September 8, 1937, Kathryn Phillips mentioned the names of Virzi, Simoncini, Attardi and Mickey as her New York connections.

By Mr. Solomon:

I did not determine how long Gentiluomo had been in the package business nor was I interested in that subject. I did not find out whether he was in New York after Kathryn Phillips had related this story to me. I believed Kathryn Phillips' story. She told me that Gentiluomo was her first New York connection. I was trying to break up the narcotic ring.

I bought stuff from Virzi and Kathryn Phillips. I did not buy any from Gentiluomo and Attardi although Attardi was the New York connection of whom Mrs. Phillips had spoken.

From my observations, I knew that Kathryn Phillips was running a disorderly house in Galveston. I did not report it to the Police Officers as I am a Federal Investigator and interested only in Federal offenses. I did not see anything disorderly going on in the disorderly house. I did not know that she was selling girls' bodies for money. I did not report her for the violation of the Mann Act. If I had any indication that she was violating that law, I would have reported her. I did not try to find out where she was getting her

460

Warren A. Heddans—for Government—Direct

girls. I testified before United States Commissioner George W. Colter in Galveston, Texas, on October 19, 1937. I do not remember whether or not I was asked then, when I first had met Kathryn Phillips. I may have been asked that. I probably did answer that it was sometime during the course of my investigation. I recall that I answered that I was not sure when I met her. I do not recall stating that I didn't remember the month I met her, or that I stated I met her at 2602 Avenue E.

461

WARREN A. HEDDANS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am an agent in the Narcotic Bureau of the Treasury Department and have been so employed for about fourteen months. Before that I was with the Bureau of Prohibition for sixteen years.

462

I know the man whose picture (Ex. 19 for identification) you show me. It is Nicola Gentile.

I know the man whose picture (Ex. 20 in evidence) you show me. It is Antholy Lima. From the 21st of April, 1937, to the end of that year, I was in New Orleans, Louisiana. I saw Nicola Gentile there at 7101 North Broad Street where he was arrested on October 5, 1937. I was one of the arresting officers and made a search of his premises at No. 1923 Moray Street. I also saw the defendant, Tony Lima, in New Orleans, on numerous occasions between the dates of June 20, 1937, and October 4, 1937. Both Lima and Gentile owned automobiles.

Warren A. Heddans—for Government—Direct

46:

I know the Bonura Brothers and have known them from about the 15th of July, 1937. I never saw any one operate the automobile of Nicholas Gentile. However, I did see a person other than Tony Lima operate Tony Lima's car. On August 16, 1937, I followed the automobile of Tony Lima which bore license No. 450120, to 708 Julia Street in New Orleans. On August 17, 1937, I followed the same car to 3326 Barrone Street in New Orleans. On August 18, 1937, I followed that car to the Southern Supply Company on Corondelet Street, New Orleans, Louisiana. On each occasion, it was driven by Philip Bonura. On September 7, and August 21, 1937, I had conversations with Tony Lima and on October 3 at the Sportland Beer Garden at 2643 Washington Avenue, New Orleans, Louisiana.

464

On August 21, 1937, Mr. Talent who is a narcotic agent and myself went to the Sportland Beer Garden. When we arrived there, we each ordered a drink and had a conversation with a man who was waiting at the bar. As we started to leave the premises, he introduced himself as Anthony Lima saying he was from New York. That was the same person whose picture I have just examined. On September 7, and October 3, of the same year, we had a conversation with the same person. He told us, at that time, that his partners in the ownership of the Sportland Beer Garden were Frank Cicciofera, Jimmy Campo and Thomas Siracusa; that they had rented the place for a year. At that time, they were trying to obtain permission from the landlord to increase the space by installing a restaurant and that their patrons were colored people.

46:

On October 3, he told us he was running a gambling game on the same premises.

66

Mrs. Thomas Badnovich—for Government—Direct
Roy A. Vinet—for Government—Direct

MRS. THOMAS BADNOVICH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am the superintendent of an apartment house.

By the Court:

67

I have lived at 326 East 13th Street for the past six years. I am the janitor of the house and am employed by the owner.

By Mr. Martin:

I know the man whose picture (Ex. 20 in evidence) you now show me. It is Mr. Lima. He lived at 326 East 13th Street on the third floor with his three children. He moved from the house about nine months ago in August, 1937.

68

ROY A. VINET, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a clerk at the Western Union Telegraph Company, New Orleans, Louisiana, and have been so employed for about sixteen years.

By the Court:

I saw this paper (Ex. 26 in evidence) on Father's

Day of last year. It was on the second Sunday of June.

By Mr. Martin:

It is a draft that was prepared by the clerk that I relieved.

By the Court:

I know the person from whom I received it. I saw him before I received it and I have seen him since that time. I do not know what his name is. I had seen him in New Orleans but I cannot say exactly how many times. I saw him at Canal Street, around the telegraph office.

470

I know the person on this picture (Ex. 20 in evidence) but I do not know his name. He is one of the men who came in with the other man of whom I have just testified.

I also know this man on this picture (Ex. 27 in evidence).

471

By the Court:

I do not know his name. I have seen him on many occasions. The only time that I saw him in the company of the person shown in Ex. 20 in evidence was the day when they came to the telegraph office. The man known on (Ex. 27 in evidence) this photograph handed me (Ex. 26 in evidence) this paper.

(Government's Exhibit 27 received in evidence, over objection. Exception.)

472

Ray A. Vinet—for Government—Direct

It is conceded that Ex. 27 in evidence is a photograph of Defendant Ciccioferra.

(Government's Exhibit 20 received in evidence.)

I had a conversation with these two men pertaining to the draft. Ciccioferra did all the talking in the conversation. The other man did not talk at all. I made out a money order application and I wired the money to New York.

473

I have seen this paper (Ex. 28 in evidence) before. I saw it at the time that Ciccioferra wrote it out. As a matter of routine, I put my initials in the left hand corner to show who handled it. After he wrote it out, he gave it to me. He endorsed the draft (Ex. 26 in evidence) to me so that I could wire the money to New York. The same person who wrote the money order, (Ex. 28 in evidence) wrote the draft (Ex. 26 in evidence). It was Ciccioferra. I do not recall the date, but as I said before, it was Father's Day, sometime in the morning between midnight and 1 A. M. I do not know whether there is a record in the office of the Western Union

474

of the events which I have just described. It is an original document and no copies were prepared.

Mr. Martin: May I offer Government's Exhibit 28 in evidence?

Mr. Edelstein: We object to it on the ground that that purports to be a money order sent by A to B. There is no proof that it ever got to B or is there any proof that the money order ever reached New Orleans from New York.

By the Court: Overruled.

Mr. Edelstein: Exception.

(Government's Exhibit 28 received in evidence.)

Raymond A. Richards—for Government—Direct

Exhibit 26 bears my signature which was placed thereon in the regular course of business.

(Government's Exhibit 26 received in evidence.)

Exception.

After I prepared Government's Exhibit 26, I wired the money to New York. This is done by means of a special form in which we have a code word for the amount. This was not written in my handwriting but was typed by me. After I typed it, I sent it up to the Traffic Department and the wireless operator sent it on to New York. I filled the paper out by putting the code word in and the name of the addressee Cola Gentile whose address was 90 Elizabeth Street. I also gave the sender's name, Anthony Lima. As I said before, I do not recall what the code word was for the amount. The amount was \$1,300.00. The only writings on the draft were the amount, the addressee's address and the sender's name.

RAYMOND A. RICHARDS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a narcotic agent in the Treasury Department and have been so employed for the past nine years. My post of duty is at New Orleans, Louisiana.

I recognize this photograph (Ex. 19 for identification) as that of Nicholas Gentile. I arrested him on October 5, 1937, in New Orleans. I arrested him about midnight in front of 701 North Broad Street. He had been seated in an automobile. I was accompanied by Mr. Talent, Mr. Heddans, customs man Foster and two City

George Tuyes—for Government—Direct

478 detectives. After the arrest, we drove to the Federal Jail. There were two other defendants with Gentile. Gentile then took us over to 1923 Moray Street where he had been living. He took the key from his pocket, opened the door and we went in.

Q. Now, what if anything, did you find in the place?

479 Mr. Solomon: Just a moment. We object to that on the ground that it is not binding on any of these defendants.

The Court: I will overrule this objection and receive it subject to connection.

Mr. Solomon: We respectfully except.

I went upstairs to the front room of these premises and I found three packages. I searched the packages and found a glazed paper bag which had been clipped at the top. It was a small bag about three inches in width. I took it in my possession. I submitted it to the Government chemist, Mr. Hoyt. This (Ex. 29 in evidence) is a piece of the paper that I submitted to the chemist after the arrest of Nick Gentile. I had placed my initials (R. A. R.) on it for future identification.

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GEORGE TUYES, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am employed by the Southern Bell Telephone and Telegraph Company as office manager and have been so employed for about twenty-five years. From the records, I am familiar with the location of telephones in

my area. During the months of July and August, 1937, there was a telephone in the Sportland Beer Garden at 2624 Washington Avenue, New Orleans, Louisiana. The number was Jackson 9404. At No. 2728 Claiborne Avenue, New Orleans, there was a telephone in 1937 under the name of Philip Service Station. The number was Jackson 9385. At 3109 Allen Street, New Orleans, Louisiana, Mrs. Rose Cicciofera was the owner of the telephone number Grayson 2569. These telephones were not in operation during the entire year of 1937, as the last one I referred to was installed on February 17th of that year, and it is now disconnected.

482

W. B. REYNOLDS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a special investigator of the Alcohol Tax Unit. My post of duty is at Fort Worth, Texas. I have been in the Government service for about seven years and have taken a course of instruction in New Orleans, Louisiana, on placing taps on telephone wires. I have testified as a technician in such matters in courts of record. On August 19, 1937, I placed a tap on the telephone number Jackson 9404 which was located at Sportland Beer Parlor at 2643 Washington Avenue. I also installed a tap at a filling station located 2328 Claiborne Avenue, New Orleans on July 22, 1937. The number was Jackson 9385. I also installed a tap on telephone number, Jackson 4216. I don't know the address of this number. I am not familiar with the premises known as the Sportland Beer Garden. I do not know of my own knowledge whether there is more than one telephone in

483

484

Benjamin Lirpe—for Government—Direct

that place. I do not have a record of any other telephone. At the time of the supervision of this wire, it was the only telephone in the Sportland Beer Garden.



BENJAMIN LIRPE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

485

I am an investigator for the Alcohol Tax Unit, Bureau of Internal Revenue. My post of duty is at Houston, Texas, and I have been in the Government service for about eight years.

This paper (Ex. 30 in evidence) is in my handwriting. I made it on September 13, 1937, at 2801 Washington Avenue, New Orleans, Louisiana, while I was supervising telephone number Jackson 9404. I intercepted the conversations on the telephone and these records relate thereto. The document embraces all the notes that I made.

486

By Mr. Solomon:

The conversations which I recorded on this paper were incoming calls. They were also outgoing calls. I cannot tell whether any of these conversations came from calls made outside of the State of Louisiana. I knew that the incoming calls were all made from New Orleans, because of the fact that I knew that the party making the calls was in New Orleans at that time. I knew that the people were in the City because I could identify the voices. The only way that I can explain that these incoming calls were made from New Orleans

Benjamin Lirpe—for Government—Direct

was by the sound of the voices and also because of the manner in which the telephone operator was making the inquiry regarding the station.

By Mr. Martin:

I would know a party is calling long distance because the operator would tell my station that so-and-so was calling from such-and-such a station.

By Mr. Shapiro:

If a call is made direct without person-to-person, from out of the city, the operator usually says: "Hold the line; this is such and such a City calling".

I have never worked for the telephone company. I do not know their rules and regulations. I have been tapping wires for about three and a half years. If a person lived in the City of New Orleans and went overnight to another State and called a certain number, I could not tell whether or not that particular person was in the State of Louisiana or in an adjoining State. The voice would be the same.

By Mr. Martin:

I reside in Texas and I am assigned to the Bureau of Narcotics at New Orleans. I am personally acquainted with all the people that participated in the telephone conversations which I have interposed. I have seen all of them within the State of Louisiana. On the day that the calls were made, I saw them at the Sportland Beer Garden.

90 *Benjamin Lirpe—for Government—Cross—Redirect*

By the Court:

Everything on this paper is in my handwriting.

Cross Examination by Mr. Shapiro:

91 I am not familiar with the border line of Mississippi. I believe that by motor at a reasonable speed, it would take about an hour to go from New Orleans to the border line of Mississippi. When I had my listening post, I was not on the premises of the Sportland Beer Garden. I was about eight or ten blocks away. My tour of duty would keep me there all night and also during the day. Sometimes, I would leave about 2 in the afternoon and return about 6 in the evening. There were two of us there on twenty-four hour duty because we lived at the place. I would not be on duty continuously for twenty-four hours. The time varied every day, but the least amount of time that I was on duty each day was about twelve hours. I cannot say definitely whether or not the particular persons referred to in the conversations did or did not go to the State of Mississippi during those twelve hours.

92 *Redirect Examination by Mr. Martin:*

The date of the first conversation that I overheard was on September 13, 1937. I recognized the voice of the person who had the conversation. I have heard it twice not through the medium of any instrument. It was a personal conversation with him which lasted for about five minutes on the 23rd of September, 1937. I

had not seen this man prior to that time. There was no one else present at the conversation. Towards the end of October, 1937, I had a further conversation with him which took about three or four minutes.

By Mr. Martin:

Q. After you had spoken to this person, were you able to recall having heard that voice before?

Mr. Solomon: No foundation. Not in proper foundation. 494

The Court: Objection overruled.

Mr. Solomon: We respectfully except.

I had heard that voice over the telephone approximately seventy or eighty times. The time when I first heard it was on September 13th at 3:12 P. M. over telephone number Jackson 9404 in New Orleans. As a result of having heard that voice so often, I was able to identify the speaker.

Recross Examination by Mr. Solomon:

The conversation over the telephone was sometimes in broken English and sometimes in Italian.

I understand both languages. The conversations which I personally had with this party were all in English. The conversations which I had in person related to placing bets on horses. I ascertained the person's name when I first heard it over the telephone,—also when I heard someone calling him at a dice table.

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Benjamin Lirpe—for Government—Redirect
Joe McMurray—for Government—Direct

Redirect Examination by Mr. Martin:

497

Both names corresponded. His name was Jimmy Campo. On the first telephone conversation which I had intercepted on September 10, 1937, he was speaking with Rose Cicciofera, Frank's wife. The second conversation of that day took place at 3:18 between Jimmy Campo and Frank Cicciofera. There was one conversation at 3:50 P. M. on that day between a man named Joe whom I did not know and Frank Cicciofera. There was another conversation at 4:55 P. M. that day but not between the same people. I did recognize the voice of the party who spoke on that occasion. I met that person later. It was Frank Cicciofera. The last conversation on that day was between Frank and Rose. The date of the next conversation was September 18, 1937. There were three people in this conversation. They were all known to me and I recognized the voices of each of the parties. They were Mr. and Mrs. Cicciofera and Tony Lima.

498

The next conversation took place on September 20, at 7:30 P. M. It was between Tony Lima and a person whom I did not know personally, but purporting to be Siracuso. The person on this picture (Ex. 20 in evidence) is Tony Lima.

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JOE McMURRAY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am the chief clerk of the Automobile Department of Paris County, Houston, Texas. I have produced some

Hiram G. Hines—for Government—Direct

of its records under subpoena.

These are original documents from the files in our office.

(Exhibits 31, 32 and 33 received in evidence.)

HIRAM G. HINES, called, as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am an investigator in the Alcohol Tax Unit. My post of duty is San Antonio, Texas. I have been in the Government service since June 1, 1930.

This paper (Ex: 34 in evidence) is in my handwriting. I made it, on supervision of the telephone wire Jackson 9385, at St. Charles Avenue and Washington Avenue in New Orleans, Louisiana. I am personally acquainted with the location of the telephone. It was in premises which were used as a negro beer parlor on Washington Avenue, the name of which I do not now recall. I recognized the voice of the person who made the call. I was able to do so because while on this supervision, I went down to the beer parlor and spoke with him personally. I had been introduced to him prior thereto.

One of these people was Tony Lima. The other one was Frank Cicciofera. It was held on August 10, 1937, at 3:46 P. M. The next conversation which I overheard on this wire was held on August 25, 1937, at 11:42 A. M., but it was not between the same two people. However, I recognized the voices as I had spoken personally with those parties a number of times. One

Hiram G. Hines—for Government—Cross

of the speakers was Philip Bonura who had a filling station on the corner of Washington and Claiborne Avenues. The other one was a person known as Jimmy whom I had never spoken to but whom I may have seen in the beer parlor.

The next conversation which I overheard was on August 27, 1937, at 6:50 P. M. It was not between the same people. It was held between Tony Lima and Nick Bonura. On August 29, 1937, at 12:45 P. M., a conversation took place between Tony Lima and a person I do not know. All these notes were made by me at the time I overheard the conversation.

The person on this photograph (Ex. 20 in evidence) is Tony Lima.

Cross Examination by Mr. Shapiro:

All the telephone calls which I overheard were local calls. My listening post was on the incoming line. I do not know whether the calls were made from a pay station or not but I know that the phone which I supervised was not a pay station. I do not know where they came from. It would take a person more than an hour to go from New Orleans to the nearest part of the State of Mississippi. If a call came from out of the State, the telephone operator would always ask what the number was and state that the call was being made from a certain number at a certain location.

I never worked for the telephone company and I did not check with any of its officials regarding methods of procedure.

Savado A. Costello—for Government—Direct

505

There are the original notes and an accurate transcription of the conversation. I wrote them in longhand.

SAVADO A. COSTELLO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a custom guard at the Port of New Orleans. I have been in the service since November, 1935.

506

This paper (Ex. 35 in evidence) is in my own handwriting. I made it between the dates of September 30 and October 1, 1937, in an apartment on Washington and St. Charles Avenues in New Orleans while I was supervising a telephone tap on Jackson 9404. The wire is located on Magnolia Street and Washington Avenue in New Orleans in premises known as the Sportland Beer Garden.

The first conversation was held on September 30, 1937, and I recognized the voices of the persons who had the conversation. I was able to identify them because between the dates September 30 and October 5, I made it my business to stop at this beer parlor and spend some time there each day. There I heard the people whose voices I heard on the telephone. Other persons called them by name.

507

This (Ex. 20 in evidence) is the photograph of the man who responded to the name of Tony Lima when called to the telephone in the Sportland Beer Garden. His name is Tony Lima. In regard to the first telephone conversation which I overheard on September 30, I did no recognize the voice of the other person who spoke

508

Savado A. Costello—for Government—Cross
Tommy Umberger—for Government—Direct

with Lima. There was a second call on that day which I overheard, but I never spoke to the people in person.

On this same day there was a subsequent conversation in which I recognized the voices of the speakers although I had never met them in person.

509

On October 1, 1937, I overheard another conversation in which three people took part. I had spoken to two of them in person and by their voices, I recognized them as being Tony Lima and Louis Ruppolo. On the same day during another conversation, I recognized the voices of the speakers but I had never met them in person. This was true also of another telephone conversation. The last telephone call on that day was made between Tony Lima and Louis Ruppolo.

I am able to speak and understand Italian. Some of those conversations which I refer to were in Italian.

510

Cross Examination by Mr. Shapiro:

I do not write shorthand. These are not the original notes which I made. They were made on scrap paper and I destroyed them. These notes contain practically the same information as the scraps.

TOMMY UMBERGER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My right name is Tommy Umberger. I know two brothers whose names are Philip and Nick Bonura. We

Tommy Umberger—for Government—Direct

met in August, 1937. I have had business dealings with them. Charlie Caruso took me out to Washington Avenue and South Claiborne and introduced me to the brothers. I spoke to Philip Bonura about purchasing some heroin. I told him that I had come from Fort Worth, Texas, and that I was selling heroin there. He told me to come back in a few days after he had checked up to find out whether or not he could sell the stuff to me. This took place on August 5, 1937.

On August 11, 1937, I came back to the same place with Charlie Caruso. Philip Bonura told me that if I came back alone about 8 o'clock that night, I could purchase some heroin.

Agent Robinson gave me \$90.00 for two ounces of heroin. I went to Philip Bonura and told him that I wanted to make a purchase. He requested me to wait at the filling station with his brother, Nick. Philip returned and got into the automobile, driving me to Field Avenue in New Orleans, Louisiana. He got out of the car and told me to drive to the first red light and wait. In a few minutes, he brought two ounces of heroin. I took the drugs to the DeSoto Hotel in New Orleans and turned it over to Agent Robinson. The \$90.00 which I had received from Agent Robinson I had given to Philip Bonura in payment for the drugs.

On August 14, 1937, I again saw Philip Bonura. Agent Robinson gave me \$135.00 for three ounces of heroin. I drove out to the filling station and gave that money to Philip Bonura, who told me that his brother Nick was to take me to the Golden Rod Inn on Frenchman Street. Nick Bonura closed the filling station, got into my car with me and drove to the Inn where I received the three ounces of heroin from Philip Bonura.

514

Tommy Umberger—for Government—Direct

I then went to the DeSoto Hotel and turned the drugs over to Agent Robinson.

515

On August 20, 1937, Agent Robinson gave me \$140.00. I drove to Philip Bonura's filling station and I arrived there about 6 o'clock in the afternoon. I told him that I wanted three ounces of heroin for which I gave him \$140.00. He then went across the street, purchased two sodas, gave me one and also \$5.00 in change. He made an appointment to meet me at the Golden Rod Inn about 10 o'clock that night. In the meantime, I went to the DeSoto Hotel and gave Agent Robinson the \$5.00 which I had received from Bonura. That night, I met Philip Bonura at the appointed place, received the three ounces of heroin from him and later turned it over to Agent Robinson. I would recognize the car Bonura was riding in when this happened. It was a Terraplane. He told me that it was his car. He had a girl friend named Anna with him. I had a further transaction with him on August 23, 1937, when I gave him \$135.00 for three ounces of heroin. I was meeting him at the Golden Rod Inn, but he did not keep the appointment. The next day on August 24, 1937, I drove out to his filling station and he told me that he did not deliver the three ounces of heroin to me because the Police had been out there and that he had been afraid to come near me. However, he made an appointment to meet me at 2 o'clock at the Inn the usual place. At that time, he delivered three ounces of heroin which I in turn gave to Agent Robinson.

516

I have known Frank Cicciofera for about 12 years and have had dealings with him. On August 23, 1937, I saw him at Philip Bonura's filling station when I went there to purchase the drugs of which I had just spoken.

Daniel E. Robertson—for Government—Direct

On August 24, 1937, I went to the Sportland Beer Garden and spoke with him for several minutes. I told him that I was in town from Fort Worth and was buying about twenty ounces of heroin a month and asked him if he could take care of me. He told me that Philip Bonura had been his connection and that he had been lucky and never been "knocked off". He told me that the heroin which I had been purchasing from Bonura was his and that Bonura had purchased it from him. He did not wish to sell it to me directly, because that would anger Philip Bonura. He also told me that the price of the heroin would be between \$40.00 and \$50.00 an ounce, that in the future I should go directly to him.

DANIEL E. ROBERTSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a narcotic agent in the Treasury Department. My post of duty is Fort Worth, Texas, and I have been in the Government service for almost twenty years. I am acquainted with Tommy Umberger, the preceding witness. I also know Philip Bonura. On August 20, 1937, I saw both these persons together at Bonura's service station. At that time, I saw Tommy Umberger give Philip Bonura \$140.00. I kept Philip Bonura under observation after he got the \$140.00 and he went to a grocery store and changed a \$10.00 bill. He got a \$5 and four \$1 bills, some change and two bottles of coca cola, took it to the car and gave the informer the \$5 bill and a bottle of "coke". The next time I saw these two people was on August 23, 1937. Again, they were at the service station

520 *Terry A. Talent—for Government—Direct*

and I saw money passed from Tommy Umberger to Philip Bonura.

521 I know a man named Frank Cicciofera. I first saw him on August 23, 1937, while he was talking with Philip Bonura at the latter's place of business. On August 24, 1937, at about 5 P. M., I received three ounces of heroin from Tommy Umberger.

I know Mike Sgitcavich and I see him in the Courtroom. (Witness identifies defendant Mike Sgitcavich.) The first time I saw that man was on April 9, 1937, at the northend of the causeway within the City of Galveston, Texas. With him, at the time, was informer Talkington, Agent Talent and Joe Massa. I do not see Massa in the Court room.

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TERRY A. TALENT, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

522

I am a narcotic agent and my post of duty is New Orleans, Louisiana. I have been in the Government service for about twelve years. Since April, 1937, I have known a man named Joe Massa. I was introduced to him by informer Talkington and subsequently I made several purchases of heroin and morphine from him. on April 4, 1937, he sold me five ounces of heroin at Galveston, Texas. At that time Massa delivered the heroin to informer Talkington in my presence. On April 19, 1937, I was introduced to Massa by the informer. Massa delivered five ounces of heroin directly to me for which I had paid him in advance. This transaction took place at the eastern end of Galveston cause-

way and a man whom I recognized as Mike Sgitcavich approached us with a package in his hand. He gave this package to Massa who handed it to me. I recognize Mike Sgitcavich as one of the defendants in the courtroom. (Witness identifies defendant Mike Sgitcavich.)

I again saw Massa on April 19, 1937, at the Houston end of the causeway, at which time I purchased six ounces of heroin for \$37.50 an ounce. The only other person present was informer Talkington.

I again met Massa on June 17, 1937, at Galveston, Texas. I purchased five ounces of heroin from him for \$37.50 an ounce. Informer Talkington and narcotic agents were in the vicinity. On July 22, 1937, I met Mike Sgitcavich again. This meeting was pursuant to a telephone call in which informer Talkington made an appointment to meet Sgitcavich at the meeting which took place on East Beach. He asked me what I wanted and I replied that I wanted three ounces of heroin and two ounces of morphine. He said that he could deliver the bacon immediately but that we would have to drive to Houston which was approximately fifty-five miles away to get the morphine; that it was dangerous to be in Houston; and that there had been a gang killing. I informed him that no one knew me in Houston and I would as soon meet him there. He delivered three ounces of heroin to me on the beach at Galveston for which I paid him \$112.00. He then began to drive to Houston, following me, in a Government car. It was dark when we arrived and we could not make the connections to procure morphine so we made an appointment for the following morning. Informer Talkington and I met him at 10 o'clock the following morning, and he instructed me to follow him. We drove toward San

326

Terry A. Talent—for Government—Direct

Antonio, Texas. On the way, Sgitcavich stopped his car and came into mine. He delivered two ounces of heroin to me for which I paid him \$350.00 in Government funds.

327

I remember August 20, 1937, in which I witnessed a delivery of drugs from Philip Bonura to informer Talkington at the Golden Rod Inn on Frenchman Street, New Orleans, Louisiana. I have seen defendants Tony Lima, Tommy Siracuso, Jimmy Campo and Cicciofera at the Sportland Beer Garden on Washington Street in New Orleans, Louisiana.

This is a photograph (Ex. 20 in evidence) of Tony Lima and this is one of Frank Cicciofera (Ex. 27 in evidence).

528

I know the defendant, Louis Ruppolo. I was present in the Monteleone Hotel with Agent Clapper, Inspector Hard and Mr. Head, another narcotic agent, when Louis Ruppolo had a conversation on the telephone with a man whom he called Tony Lima. I could only hear Ruppolo's part of the conversation, as I did not listen in on it.

This (Ex. 36 in evidence) was purchase from Joe Massa at Galveston, Texas, on April 4, 1937.

This (Ex. 37 in evidence) contains five ounces of heroin which I purchased directly from Joe Massa and Mike Sgitcavich on April 9, 1937.

This (Ex. 38 in evidence) contains a third package which I purchased from Joe Massa.

This (Ex. 39 in evidence) contains what I purchased from Joe Massa on April 27, 1937.

This (Ex. 41 in evidence) contains a purchase of heroin

Terry A. Talent—for Government—Cross

529

from Joe Massa on June 18, 1937.

This (Ex. 42 in evidence) contains a purchase which I made on June 28, 1937, from Joe Massa at Galveston, Texas.

This (Ex. 43 in evidence) contains a purchase which I made on September 3, 1937, from Joe Massa.

This (Ex. 44 in evidence) contains a purchase which I made from Mike Sgitcavich at Galveston, Texas, on July 22, 1937.

530

This (Ex. 45 in evidence) contains a purchase which I made from Mike Sgitcavich in Houston, Texas, on July 23, 1937.

I know a man named Nicola Gentile. I first met him on or about October 5, 1937, in New Orleans, Louisiana.

This (Ex. 46 in evidence) is the picture of Mr. Gentile, the man to whom I have just referred. I met him on October 5, 1937, in New Orleans, Louisiana, at 301 Broad Street, at which time he was sitting in Tommy Siracuso's automobile and I placed him under arrest, pursuant to the indictment in this case.

531

I know two of the other defendants on trial, Sgitcavich and Jerry Ferace. I placed the latter under arrest in New Orleans. I recognize the defendant Ferace.

Cross Examination by Mr. Kaplan:

I have known Mike Sgitcavich since 1934. The first time I saw him in 1937 was on April 9th. It was nearly midnight. I was introduced to him by Mr. Massa. We

Terry A. Talent—for Government—Cross

532 were at the northend of Galveston causeway, seated in an automobile. There was plenty of light there. Sgitcavich came over to my car and asked me to light a match for him. We were in conversation for about five minutes.

533 The next time I saw him was on July 22, 1937, on the beach at Galveston, Texas, at about 5 o'clock in the afternoon. At that time, he gave me three ounces of heroin. Immediately after I made this purchase of drugs from Mr. Sgitcavich again at Galveston, I went to the Hotel William Penn in Houston, Texas, where I made a chemical analysis and found the purchase to be heroin. I then turned it over to Agent Robertson.

This (Ex. 44 in evidence) is the purchase I made on July 22. The handwriting on the package is not mine. It is that of Mr. Wiggins. He did not write it in my presence. When this package was shown to me by Mr. Martin, I did not look inside the envelope although I am certain that my initials are inside of it.

534 I did not see what was put into the package. What I know about it, was told to me by Mr. Wiggins. As a matter of fact, I never purchased the contents of this package (Ex. 40 in evidence) from Mr. Massa. I examined this paper and then re-examined the package and found that I was wrong. I was present when some of the contents were put into some of these packages (Ex. 36 to 44 in evidence).

Sgitcavich delivered two ounces of morphine cubes to me for which I paid him \$150.00. This was turned over to Inspector Wiggins after I had made a regular nitric acid test. I do not know in which package that purchase is now. However, I can pick it out. I was not

Terry A. Talent—for Government—Cross—Redirect

present when that purchase was put into the envelopes which are exhibits here. I could pick out this purchase by my initials on the drugs. These packages are sealed and I cannot tell if my initials are inside without breaking the seal. I had three dealings with Sgitcavich on April 9, July 22, and July 23, 1937.

On the occasion of April 9, he handed a package of narcotics to Massa; Massa handed it to me, and I paid Massa \$37.50 for five ounces of heroin. I had no other business dealings with him, nor did I ever see him in company of any of the other defendants on trial other than Joe Massa. On occasions, since the trial started, I have been in company of Agent Robertson. We are living at the same hotel. The witness Umberger resides there also. I have not had any occasion since this trial started, to point out any of the defendants on trial to the Government witness so that they could be identified.

Cross Examination by Mr. Shapiro:

I did not arrest Joe Massa.

Cross Examination by Mr. Kaplan:

I was not present when Mike Sgitcavich was arrested.

Redirect Examination by Mr. Martin:

When I stated that I have paid \$37.50 for five ounces of narcotics, I meant that it was \$37.50 per ounce.

538

Terry A. Talent—for Government—Redirect

This package (Ex. 44 in evidence) contains three smaller packages (Ex. 44-a, 44-b, 44-c in evidence).

539

I recognize the handwriting appearing on this package (Ex. 44-a in evidence) which has been handed to me. There are the initials of several agents upon it, including mine. This is also true of the additional packages, (Ex. 44-b, Ex. 44-c in evidence) which have just been handed to me. This package (Ex. 39 in evidence) contains five smaller packages (Ex. 39-a, Ex. 39-b, Ex. 39-c, Ex. 39-d, Ex. 39-e in evidence). All of these five packages bear my initials. This package (Ex. 41 in evidence) contains five smaller packages (Ex. 41-a, 41-b, 41-c, 41-d, 41-e in evidence). These additional five packages which have just been handed to me also bear my initials. This package (Ex. 42 in evidence) contains five smaller packages (Ex. 42-a, 42-b, 42-c, 42-d, 42-e in evidence). These five packages also contain my initials.

540

This package (Ex. 43 in evidence) contains five smaller packages (Ex. 43-a to e in evidence). This package (Ex. 45 in evidence) contains two smaller packages (Ex. 45-a to b in evidence). This package (Ex. 36 in evidence) contains five smaller packages (Ex. 36-a to e in evidence). This package (Ex. 37 in evidence) contains five smaller packages (Ex. 37-a to e in evidence). This package (Ex. 38 in evidence) contains six smaller packages (Ex. 38-a to f in evidence). All these smaller packages contain my initials.

A field test is a chemical analysis which is made by Government agents when a purchase of narcotics is made, when we cannot go to a regular chemist. I have taken field test instructions from a registered chemist.

Joe Massa—for Government—Direct

541

JOE MASSA, called as a witness on behalf of the Government being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

(Government's Exhibit 46 received in evidence.)

My full name is Joseph Massa. My home is in Galveston, Texas, and I have been named as a defendant in this indictment. I have pleaded guilty and am now awaiting sentence.

542

I know the defendant Charles Casesa whom I see present in the Courtroom. I have known him for about one year and have had dealings with him. I met him in Galveston, Texas. I was not introduced to him, but when he first met me he told me that he knew of me and had wanted to meet me for some time. He told me who he was and then brought me to his hotel room on the beach front in Galveston, Texas. He had 50 ounces of heroin and 10 ounces morphine and wanted to give it to me on consignment. He inquired of me whether I had any money and I told him that I had not. Nevertheless, I received these drugs from him and sold them. The time of this transaction was about November, 1935.

543

I met him about three or four months later in New York about April or May of 1935 or 1936. I do not quite remember.

In reference to the first conversation, I sent Casesa \$500.00 by Western Union to New York. I sent it to the order of Mrs. F. C. Carson. I was instructed to use that name by Charlie Casesa. For the name of the remitter I used "Tom Belle" This paper (Ex. 47 in evidence) is in my handwriting and I wrote it in the

544

Joe Massa—for Government—Direct

Western Union office at Galveston, Texas. At that time I sent \$500.00 to Mrs. F. C. Carson. I paid the Western Union for the telegram but I do not remember what was paid. I have examined this paper again but I cannot tell how much money I gave the Western Union.

By the Court:

545

The fact that I sent the telegram in care of Western Union in Brooklyn, refreshes my recollection as to what I did.

By Mr. Martin:

I sent \$500 by this telegram. I gave Western Union \$500.00 in cash at that time.

(Government's Exhibit 47 received in evidence over objection and exception.)

546

When I saw Casesa in New York in April or May, 1936, he visited me at the Luxor Hotel on 46th Street and Broadway. He came there alone after he had telephoned. He took me to his home in Brooklyn. When we got there we had a conversation in regard to narcotics. I still owed him some money for the first consignment and I paid him about \$600.00 or \$700.00 in cash. We then discussed what I was to take back with me. After two or three days, I went to this home and obtained 100 ounces of heroin and 10 ounces of morphine. I then went to the airport and took a plane back to Texas. Before I left, he asked me to send the money by Western Union, which I did not want to do. The 100 ounces of heroin cost \$17.00 an ounce, and the 10 ounces of morphine cost \$50.00 an ounce. That was what I took

Joe Massa—for Government—Direct

547

back. In Galveston I owed him for 50 ounces at \$20.00 and 10 ounces of morphine at about \$50. We also had some conversation in regard to the first consignment. As I still owed him a few hundred dollars on that consignment, he did not want me to take an airplane. I stated that if I could not travel in the manner in which I desired, he would have to bring it over himself. This he would not do. The balance which I still owed him was \$1600.00. That is for the second consignment.

At the time I arrived in Brooklyn, Casesa told me that I owed him \$300.00 out of a debt of \$1500.00 for the first consignment.

548

I know a defendant named Biaggio Angelica. I have known him since the summer of 1936. About a month after I returned to Texas from New York, he introduced himself to me at my cafe, No. 1905 23rd Street, Galveston, Texas. He introduced himself and had a conversation with me. He told me he knew who I was and inquired from me as to the source of my narcotics. I did not tell him but he seemed to know where I was getting them. He came back about a week later with Simoncini and Attardi.

549

I see and identify Simoncini and Attardi in the Courtroom. We had a conversation about narcotics in which they spoke about Charlie Casesa. They told me that I owed Casesa some money. The three of them said that they wanted my business. I told them that I could not leave Casesa as I owed him some money. They then told me not to pay him; that if he came to Galveston, I should inform them. They wanted to leave some narcotics with me, but I told them that I didn't need any at that time. Simoncini and Angelica returned about two weeks later and brought about 30 ounces of heroin with them. During their first visit, I had ordered no definite quantity of

Joe Massa—for Government—Direct

550 narcotics from them. When they brought the narcotics, they told me to sell the stuff but not to pay any attention to Charlie Casesa. Subsequently Casesa called on me and wanted some money. I told him that I did not have any. He remained for several days and then departed.

551 The narcotics which I received from Angelica and Simoncini was obtained by me on consignment. I had further dealings with them. During 1936, I bought about \$6,000.00 or \$7,000.00 worth of narcotics from them. I paid the money to Simoncini, Attardi, Angelica and Tony Virzi.

My home is No. 1414 10 $\frac{1}{2}$ Street, Galveston, Texas. I also have a fishing camp at Port Bolivar where I live with my wife, Gladys Massa. I bought the camp about a year ago and went up there in the summer of 1937. While I was there, Angelica, Simoncini and Attardi visited me. We spoke of narcotics but none were ever delivered to the camp.

552 I know a man named Joe Passarello and have known him for about six years, but have never done any business with him.

I have known a man named Slim McDonald for about a year or two and had some business dealings with him in 1937. Alphonso Attardi met me one day and introduced Joe Passarello to me, although I had known Passarello previously. Attardi told me to give Passarello anything that he wanted and that he would pay for it. A few days later, Passarello came to me and I gave him 5 or 10 ounces of heroin. Subsequently, Slim McDonald came to me with Passarello and I gave McDonald an additional 5 or 10 ounces.

This photoraph (Ex. 46 in evidence) is that of Nicola

Joe Massa—for Government—Cross

Gentile. I have seen that man once. It was sometime in August or July of 1937, at my fishing camp at Fort Bolivar. He came to my house together with Angelica Biaggio and Thomas Siracuso. We had a conversation in which Angelica introduced Gentile and Siracuso to me and told me that they were big men in the narcotic business. He wanted me to explain to them what had been going on between myself, Gentile, Attardi, and Simoncini. I did so. I explained that I owed Attardi and Simoncini some money and that Attardi had told me to give Passarello whatever he wanted. I had eventually paid back Attardi, and at the time of the conversation which I am relating, Attardi owed me \$500.00. Gentile told me to take my money from Attardi; that he did not think that I would get it and that Attardi would not pay me because the latter would not be able to obtain any more narcotics from Gentile. Gentile also told me not to do any more business with Attardi but to deal with Angelica Biaggio. The latter told me that Gentile had come from New York. At the time of my arrest, I had about 10 ounces of heroin and 2 ounces of morphine in my home. I had obtained the morphine from Angelica and the heroin from Attardi and Simoncini.

Cross Examination by Mr. Solomon:

I am forty years old. At the time of my arrest, I lived with my wife, my mother and my brothers in Galveston, Texas. I was arrested in my home on October 5, 1937, at about 6 o'clock in the morning. The agents who arrested me were Mr. Harpin and Mr. Pratt. They did not arrest my wife. I was taken to the Customs Office in Galveston, Texas, and was shown some photographs. Among others, I was shown the pictures of Nicola

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Joe Massa—for Government—Cross

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Gentile and Tommy Siracuso. I was shewn the pictures one at a time and asked whether I knew the individual represented by each one. I was not asked if I had had any business dealings with any of them. I was released on \$5,000 bail. I made a statement of my activities in the narcotics business to Mr. Clapper one of the Government agents. I believe this was done on the evening of October 5. I signed that statement and told him everything that I had testified to yesterday. I told him that I was going to plead guilty. There was no threat made to arrest my mother. At the time of my arrest, they did not go to my mother's bedroom nor did they find any dope in that room. The narcotics were in an empty room and I gave it to them. There are about seven or eight rooms in my house and upstairs in an empty room, I kept the narcotics. The first time I went into the narcotic business on a large scale was in 1935. However, in 1929 or 1930 I did go into it to take care of my own needs. I am a user of narcotics. Whenever I got the money, I would buy some. I was also selling narcotics at the same time. I bought it from various persons including a man named Joe Luke. I did not buy any from Charlie Casesa or from Attardi.

I do not know anyone named Al Mauro nor do I know anyone named Dominick DiMarso. I know a man named Roscoe Celli but I did not buy any from him. As I have testified, in 1929 and 1930 I was using narcotics and selling them, and I had a source of supply. I did not need Casesa nor Attardi to get narcotics. In 1930, I went to Federal Judge Hutchinson and requested him to send me to the penitentiary to take a cure. He told me that he could not do this for me but that if I ever came before him, he would do that. I did not go to the District Attorney and did not do anything else about it. Because

of the fact that I wanted to go to the penitentiary for a cure, I became a narcotic seller to get arrested. I did not go to a hospital to seek a cure nor did I go to the family doctor. I was then arrested for selling narcotics by Agent Mena and appeared before Judge Hutchinson and he sent me to the penitentiary for a year and a day. I served for nineteen months and eighteen days. When I came out, I did not go back to the use of narcotics. However, I have used narcotics since, but I did not use them for three years after I got out of jail. I was sentenced sometime in 1930. During the period, in which I abstained from the use of narcotics, I did not sell them either. When I started to use them again, I obtained them from Tony Giusti. I saw him yesterday in this Courtroom. I do not know whether he is going to be a witness or not. I do not know if he uses narcotics. I was buying from Giusti. I did not need Casesa or Attardi to buy from.

560

I met Attardi for the first time in December of 1937, and at that time, I was still dealing in narcotics. I was buying the stuff from Charlie Casesa. I did not come to New York to buy it. Casesa did not live in Texas in 1937. Tony Giusti was not selling narcotics at that time. I was buying them from Joe Luke. I bought from Giusti in 1929 or 1930 and from Joe Luke in 1933 or 1934. I have not discussed my testimony with anyone, since I made my statement on October 5 to Agent Clapper in Galveston, Texas. In 1937 I was buying from Joe Luke and I was also selling narcotics. I was purchasing about 2 or 3 ounces of heroin a week, and I would sell enough to keep me in money for my own use. After I purchased a quantity, I would separate it and split it up and sell some of it. I did not buy from Joe Luke after Charlie Casesa came to me. Casesa introduced himself to me.

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Joe Massa—for Government—Cross

I did not know him before that and I had never met him before that nor had I ever seen him. I did not know who he was but he knew who I was. He told me that he had heard of me. He said that he had wanted to meet me for a long time. I was not surprised when a strange man walked in and said he wanted to do business with me. Casesa brought me about 50 ounces of heroin and 10 ounces of morphine. I had never bought such a large quantity before. I did not know that he was not a Government man; however, after he explained who he was and began talking with me, I knew he was not a Government man. At the time he sold this to me, I did not have an outlet for it nor did I have any money to buy it. He gave it to me on credit. The heroin was worth about \$1,000.00 and the morphine was worth about \$500.00.

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Cross Examination by Mr. Shapiro:

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I was never convicted of any other crime. It is about four months since I last used narcotics. I took a cure voluntarily in the jail in Waco, Texas. I came to New York about in December, 1937, and I was a user at that time. I took narcotics by injection about three or four times a day.

I did not know Simoncini prior to the summer of 1937. He was introduced to me by Angelica Biaggio who also introduced Attardi. I did not pay him any money the first time, but I saw him. At other times, when he delivered something to me, I paid him in cash. However, these payments were not made immediately upon delivery; they were made after a period of credit. At that time, I had a little cafe on the beach front in Galveston, Texas. I did not have an income as I went bankrupt.

Joe Massa—for Government—Cross
Joe Passarello—for Government—Direct

565

Cross Examination by Mr. Kahn:

Joe Luke is one of the defendants in this indictment. He is in the penitentiary now, having been convicted early in 1937. I have had dealings with Attardi and Simoncini. I dealt in narcotics with Attardi and Simoncini. In my dealings with them, I never heard the name of Joe Messina nor did I have any dealings in narcotics with him.

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Cross Examination by Mr. Shapiro:

I testified yesterday about a certain meeting at my fishing camp. Certain people came out to visit me at my camp. These people were Angelica Biaggio, Simoncini, Attardi and Tony Virzi. Other people who came out to my camp were Nicola Gentile, Tommy Siracuso and Joe Passarello, also narcotic agent, Terry Talent. There was no one else.

567

JOE PASSARELLO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a defendant in this case. I have pleaded guilty to the charge and am now awaiting sentence. My home is in Galveston, Texas. I know a man named Biaggio Angelica and have known him since 1936. I first met him at Houston, Texas. I met him while I was working in the Buccaneer Night Club. No one introduced us but through his numerous visits there, I became acquainted

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Joe Passarello—for Government—Direct

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with him. I did not have any dealings with him, but he approached me once and tried to get some customers from me to sell narcotics. I told him that I did not know anyone in Houston. This occurred while I was a guest at the Auditorium Hotel in Houston, Texas. I did not see him again until three or four weeks later. I met him on the street and told him to leave me alone. About a week later, on West Gray Street, I met him again and he introduced me to Alphonso Attardi. He again spoke about narcotics and I told him I was not interested. He inquired whether I knew Joe Massa and I said I did. This conversation took place sometime in October, 1936. Biaggio Angelica was also with him and they were discussing the fact that they did not want to interfere with Joe Massa's business. As this did not interest me, I went to the Pelican Night Club. I again saw Alphonso Attardi. On September 1, 1937, in Galveston, we had several drinks together. I told him I had just closed the night club. He stated that he would have helped me with money in order to keep it open, had he known. That night we went to a party and I did not see him for about ten or twelve days. When I met him, he loaned me \$50.00 as I needed it to care for my mother's illness. Thereupon, he asked me if I would do him a favor. He told me that a certain woman owed him \$450 and that he wanted me to go over and try to collect it for him. I told him that I would and he instructed me to meet him the next night at 8 o'clock and he would send a man with me to introduce me to this woman.

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At the appointed time, I met him and he took me to the Schooner on Market Street in Galveston. At that point, Attardi got out and a man named Vincent Gentiluomo got into the car and took me to No. 2602 Avenue E,

Joe Passarello—for Government—Direct

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where I was introduced to a woman named Katherine Phillips.

I recognize and identify Vincent Gentiluomo in the Courtroom. When I met this woman, she told me that she was expecting a man named Frank with whom she had done some kind of business. I told her that Frank was out of the City; would not be back for about three or four weeks. I did not know who Frank was, I told her that he was out of the City, and that I came to collect some money. I asked her if she wanted anything. She told me she did and gave me \$50.00 and ordered five ounces of morphine or heroin.

572

I took the \$50.00 and gave it to Alphonso Attardi. At the time I gave it to him, I repeated the conversation that I had with Katherine Phillips. I told him that she would give me the balance of the money on the following Monday.

On Monday, we waited for Joe Massa for some time and met him on 17th and Boulevard in Galveston. Attardi said something to Joe which I did not hear. About an hour later, I met Joe. He gave me a package. I delivered it to Katherine Phillips and she gave me \$150.00. I thereupon turned this money over to Alphonso Attardi.

573

I have known Joe Massa for about fifteen years. He is the previous witness. Attardi sent me back to that woman several times in order to get the money but she did not have it for me.

I know Joe Messina, the man who owns the Schooner. (Witness points out Leo Attanasio.) I have known him for about fifteen years, but I never did business with him, nor did I ever have any conversation with him con-

574 *Joe Passarello—for Government—Direct*

cerning narcotics. I know a man named Jerry Feraci and I recognize and identify him in the Courtroom. I have known him for only about a week. I saw him last September on the beach in Galveston with Gentile and Thomas Siracuso and also in front of the Schooner. I once saw Joe Messina take Jerry Feraci to an automobile.

575 I recognize this picture (Ex. 46 in evidence) as that of Gentile. I have heard Attardi say that he was a big boss. At the time, called me up one night to take him to Houston in my automobile. I did not want to go but he persuaded me, and we started to Houston together with Simoncini and a man named Palopalo. Attardi told me that he wanted me to meet some people. We went to a night club called the Wagon Wheel when Gentile and Thomas Siracuso and Angelica Biaggio came in together with a man named Caverallo who is now dead. Gentile and Simoncini went to the back of the restaurant and spoke for about one and a half hours. I did not know what they were talking about during this conversation. We all went back to Galveston after that. Attardi and I

576 I know a man named Slim McDonald. I have known him for about seven or eight years. In the last year I have had business dealings with him. Alphonso Attardi told me to talk to McDonald and I did. He told him to give McDonald an order to get some narcotics from Joe Massa. I knew that this was done and Attardi told McDonald to give me the money if he was not present himself to collect.

I saw Gentile one night in September, 1937 in Attardi's house. Simoncini, Attardi's partner, was also present, together with Tommy Siracuso and Jerry Feraci and their wives and children. Another time Gentile, Angelo

Biaggio and Siracuso and a boy were there. There was no conversation about narcotics at the house. Later in the evening, we went down to the beach. In a conversation I learned that Attardi owed Gentile about \$2,000.00. Gentile told me that Attardi had forgotten that he was on relief in New York, and Gentile had taken him off relief.

Cross Examination by Mr. Solomon:

578

I am forty years old and am not married. I was arrested in this case on October 5, 1937, in my hotel room at Galveston, Texas. I was living there with Slim McDonald. He was also selling narcotics but was not my partner. He was not working for me. What I did was done only because of my friendship for Attardi. I was selling narcotics for Attardi as a favor. He had asked me to collect some money for him and I did. He told me that Katherine Phillips owed him the money. I did not know her prior to that time. Vincent Gentiluomo went with me and told her to give me the money and to order what she wanted from me. Prior to that time, I knew who Gentiluomo was but I had never spoken to him. That night, Attardi told me that I was going to collect \$450.00 for him. I do not remember whether he told me that it was for narcotics. At this time, I knew what the debt was for. When I went to the woman's house, she told me what the debt was due for. I do not use narcotics at the present time. I did use it in the past, about fifteen years ago. I have not used any since nor have I sold any.

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I pleaded guilty in this case. I did not sell any narcotics in 1935, or before that. I guess I was mixed

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Joe Passarello—for Government—Cross

up in it in 1937. I took 5-ounces of stuff to Katherine Phillips and she gave me \$150.00 which I gave to Attardi. That was in September, 1937. I obtained the narcotics from Joe Massa. Attardi had directed me to take it to Katherine Phillips. She was not a customer of mine. I did not get any money for this. I was doing it merely as a favor because Attardi had loaned me \$50.00 prior to that time in September, 1937. I was not a witness before the Grand Jury. At the time of my arrest, I did not tell what I knew of this case. However, in January, 1938, I did so at a hearing in Galveston.

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I have no regular employment. My work is that of an automobile mechanic. The last time I had a job was about eight months ago. I know about the court hearings in Texas because I was arrested. When I was arrested, I did not have any narcotics on me. The first time I was arrested was on October 5, 1937, and the second time was on December 22, 1937. At the time of my first arrest, I was not required to furnish bail. At the time of my second arrest, I was required to furnish \$2,000.00 bail. Some people from a town near Houston, placed the bail for me. I did not ask Attardi to get bail for me as he was in jail. I went to Attardi's friends and family and told them that I wanted them to get me out of trouble. I did not go to Joe Massa. Attardi came to see me in my room in Galveston when I was out on bail. He did not give me any money. He wanted some money for himself. He did not obtain the services of a lawyer for me. I did not ask him to pay all my expenses or to get me a lawyer because he had gotten me into trouble. I asked him to help me but he didn't. That is not the reason why I am testifying against him. I am testifying because I want to tell the truth. I am not getting any money from the

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Joe Passarello—for Government—Cross

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Government for being in this case. The Government is not even paying my expenses nor my railroad fare from Texas. None of the Government agents told me that I was going to get any expenses. I got the money. I worked in order to obtain the money to come up from Texas. I did not have a bank account in December. I pleaded guilty,—May 3, 1938. I came to New York by train with Slim McDonald. No Government agent came with me. The fare from Texas was \$31.95 which I paid from my own funds. Before I left Texas, I told Mr. Clapper that I was going to plead guilty. He did not come to New York with me, nor did he give me the fare. Attardi did not give me the fare nor did he come to New York with me.

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Cross Examination by Mr. Kahn:

I have pleaded guilty in this case. Before I did so I had the advice of my attorney, Anthony Mascango of Houston, Texas at the beginning of the trial. He did not receive a fee from me. At the time of my arrest, I was living in Galveston where I have lived all my life with the exception of the year 1936 when I lived in Houston. I have stated that I know Joe Messina and that I have known him for about fifteen years. I don't know Messina by the name of Leo Attanasio. I never had any narcotic dealings with him. I believe that I have testified that Attardi told me that Gentile was a "Big shot". Although I met him, I never had any narcotic dealings with him direct or otherwise. He merely told me that Attardi was trying to be a "big shot" who apparently did not remember that he had been on relief in New York. Slim McDonald stayed with me at my apartment in Gal-

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Joe Passarello—for Government—Cross

veston. He worked for me at the Texas Alamo. He was a bartender. Before that, he worked for Mazzio Gemail, who ran a saloon in Galveston.

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Gentiluomo owned a package store in the same building in which Joe Mesina's restaurant was located. At one time, I saw Joe Mesina drive by and pick up one of the defendants in this case, whom I now recognize and identify as Jerry Feraci. I do not know where Feraci's home is. I know that he was visiting in Galveston which is a summer resort to which visitors come. I do not know whether Feraci came to Galveston with his wife and children. I never heard the name Joe Mesina connected with any narcotic dealings but I saw him with Gentile.

Cross Examination by Mr. Shapiro:

588

Simoncini never gave me any narcotics nor did I give him any. I never went out to collect any money for him. I have testified to three or four meetings at which I saw him. One of these was at the Wagon Wheel in Houston. There were present at that meeting Simoncini, Attardi, Biaggio Angelica, Gentile, Siracuso and the man who is now dead. I believe his name is Roy Caverallo. They went into the back yard and they had a conference. I do not know what they were talking about. I did not see any narcotics at that time.

The next time, a meeting was held at the house in which Simoncini and Attardi were both living. At that time there were present Simoncini, Attardi, Mrs. Gentiluomo, Gentile and Feraci. They were playing cards. Their wives, also their children were present. There was no narcotics nor money for narcotics passed at that

Joe Passarello—for Government—Cross
William M. McDonald—for Government—Direct

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time.

There was subsequently another dinner at the same place. Biaggio Angelica was there and a man named Sam Young. Also present were,—Attardi, Simoncini, Gentile and Siracuso, their wives and children. There was one more meeting at which I was present. That was at the beach in Galveston, Texas, sometime around the end of September, we were having coffee. At that time, there were present,—Siracuso, Biaggio Angelica, Simoncini, Attardi and Gentile. Their families were not there.

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Cross Examination by Mr. Kahn:

When I say Sam Messina, I mean Simoncini.

WILLIAM M. McDONALD, called as a witness on behalf of the Government, being duly sworn, testified as follows:

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Direct Examination by Mr. Martin:

I live in Houston, Texas. I am a defendant in this case and have pleaded guilty. I am now awaiting sentence. I know a man named Biaggio Angelica. I met him sometime in September, 1937. He was introduced to me by Alphonso Attardi, and Joe Passarello at Galveston. I do not recall the date. They told me that they had made arrangements for me to bring something to Galveston. Several days later, Biaggio Angelica brought me 25 ounces of heroin and 5 ounces of morphine. At the time he made this delivery, I was with

592

William M. McDonald—for Government—Direct

Passarello and Attardi. He told me to get into his automobile; that someone would take me to wherever I wished to deliver this stuff. Prior to this delivery, Passarello and Attardi told me when it would be brought to me. I took the narcotics to 415 18th Street which was my sister's home. I hid it under the bathtub. When I returned to the beach, Biaggio Angelica, Passarello, Attardi and Simoncini were there. I did not have any conversation with them. They were talking in Italian which I did not understand. I saw Biaggio Angelica again on October 5 when I was arrested.

593

I have had other business with Passarello. We roomed together. I sold the narcotics that they brought to me and turned the money to Passarello and Alphonso Attardi.

I know a man named Joe Messina. He owns the Schooner. He owns the Schooner in Galveston. I met him in September at the home of Mr. Vallone. I had taken Attardi to Mr. Vallone's home on several different occasions. I do not remember the dates I have seen other people at Mr. Vallone's home while I was there. Some of them were Attardi, the Vallone family and Simoncini. There was a man there who died in Houston.

594

This (Ex. 48 in evidence) is a photograph of Biaggio Angelica.

This (Ex. 49 in evidence) is a photograph of the man who is now dead. I had known him for some time, but I never could pronounce his name. This (Ex. 46) is a photograph of a man I have seen but whose name I do not know. Passarello had pointed him out to me as the old man from New Orleans. At the time Passarello told me this we were on the beach in Galveston.

Passarello told me "he is a big boss from New Orleans". I have seen him in the company of some of these defendants. Attardi, Passarello, Simoncini and the rest whose names I don't recall.

I know a man named Jerry Feraci. I have not had any business dealings with him. He was not present at any time when I did business with Attardi. I have seen him on the beach. I have seen him with Attardi, Simoncini, Passarello and the old man.

I recognize and identify this defendant as a man named Joe Macey. I have seen him in Galveston. I also recognize and identify the defendant Gentiluomo. I saw him at a whiskey store in Galveston when Attardi went in and talked with him. I never spoke with him. 596

(Exhibits 48 and 49 received in evidence.)

Cross Examination by Mr. Kahn:

I live in Houston, and have lived there for about forty years. I am commonly known as Slim McDonald. I have roomed with Passarello in Galveston and have had narcotic business with him and Attardi. I was out at Vallone's house on several occasions. During the times I was at this house, we had spaghetti. As far as I know, Mr. Vallone never had anything to do with narcotics. As far as I know, I thought it was nothing unusual for Mr. Vallone to invite many people out there. I never had any dealings directly or indirectly with Mr. Vallone. 597

The Schooner is located in Galveston on 20th Street.

598 *William M. McDonald—for Government—Cross*

The beach parties to which I have testified were on the beach at 23rd Street or Tremont Street. I have never had any dealings with Joe Messina. Messina is the proprietor of the Schooner. I do not know whether Mr. Vallone had ever been sick or whether his mother had died. I don't know when he was operated for appendicitis. It may have been before I started to go out there in September. I was out there as a guest and had an Italian dinner there.

599

Cross Examination by Mr. Solomon:

600

I am forty-four years old. I have used narcotics but I do not use any at the present time. I first became a user in 1917 when I was in the Army. I was stationed at Redoso, Texas. I did not use them for any medical purpose. I used drugs until 1920. Since that time, I have not used any. I began to sell drugs in 1919 and the last time that I sold any was in September, 1937. After I was discharged from the Army, I came to Houston, Texas, in 1925. I met Biaggio Angelica in Galveston in September, 1937. That was the first time I met Attardi, who was introduced to me by Passarello. I know Joe Passarello since 1922. Prior to the time when I first met Attardi, I was not engaged in the drug selling business. Attardi got me into that business. Before I met Attardi, I did not know where to locate drugs or where to obtain them. I did not sell drugs in 1935 or in 1936. From January 1, 1937, to September 1, 1937, I was a bartender and I also had a concession on the beach in Galveston. When these defendants met with me on the beach, I had already lost my shop. The season was over. At that time, I was still living with Passarello. I had gotten out of the drug selling business in 1920.

William M. McDonald—for Government—Cross

601

I knew what Passarello's business was. He was working for a novelty company. He did not tell me that he was engaged in the selling of narcotics. He was running a night club called the Texas Alamo. I do not know whether he was selling narcotics prior to September. I know that in September, he and Attardi got the connection for me. I was supposed to sell drugs and give the money to them. Passarello proposed that I go into the narcotic business. I knew that it was a bad business although I had reformed. I have been convicted of selling liquor during prohibition and for illegally transporting stolen automobiles from one state to another. For the latter crime, I served three years beginning in 1922. I was also tried for selling narcotics and put on probation. That was in Dallas in 1920. I had not been convicted of a crime since then. My memory is fairly good. I usually remember pretty well. I never had any lapse of memory. I believe that I told Passarello I deemed it pretty risky to go into the narcotic business when he asked me in 1927. I was not working at that time, and he was paying my room rent and the cost of my food. At that time, I was dependent upon him for my support. To show my gratitude I would do him a favor. Passarello got me into trouble in this case. Attardi furnished the merchandise. He introduced me to Attardi. Passarello never told me how many customers he had. I never bought any narcotics from Attardi. However, I paid money to him. It was the money which I received for the sale of narcotics which Joe Massa had given me. Attardi made arrangements for me to get the narcotics from Massa. Prior to that time, I did not know Massa personally. Passarello introduced me to Massa. I have not bought anything from him. The first time I got the stuff from Massa was in the early part of September, shortly after Labor Day. I received

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604

Erwin J. Lucchesi—for Government—Direct

10 ounces. I sold it to Frenchie Etei in Galveston whom I knew before September, 1937. I gave some of the money I received from him to Passarello and the remainder to Attardi. I paid no money to Massa. I received \$30.00 for an ounce from Frenchie. I did not sell the 10 ounces to him at one time. I would keep it hidden until I needed it. I never hid any in Joe Passarello's apartment. Joe knew I was in the narcotic business. Some of the narcotics I hid at my sister's home. Others I hid in alleys and under tin cans in the street.

605 I got narcotics about three or four times from Massa in the middle of September. The second allotment I hid in the Majestic Hotel where I had a room which I paid for myself. The third allotment was also hidden in the Majestic Hotel until I disposed of it. Joe Passarello found out later about this room of mine in the Majestic Hotel. Although he knew I was making money from these deals, he never asked me to pay him back for my room and board. I came to New York on the 3rd day of this month. I paid my own fare. A friend of mine, Ollie Quinn, gave me the money. He is living in Galveston where he is in the slot machine business.

606 Before I left, I sent Joe Passarello to meet me in New Orleans. I am living with Joe Passarello at a hotel. I have not been getting money from any other source.

ERWIN J. LUCCHESI, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am employed by the Western Union as a telephone operator in New Orleans and have been so employed for

Erwin J. Lucchesi—for Government—Direct

607

fourteen years.

This paper (Ex. 50 in evidence) was prepared by Mr. Turlich, who is also a telephone operator in New Orleans. It was prepared on September 8, 1936. I cannot tell who was present at the time it was prepared.

This paper (Ex. 51 in evidence) was prepared by me on October 18, 1936. I had no conversation with the customer except other than to accept it.

I recognize and identify the customer as the defendant, Jerry Feraci. I had no conversation with him other than to take the money from him. He told me he wanted to send \$2,000.00 and I prepared the application. He told me the name the money was to go to and the address. I do not recall whether he mentioned it verbally or gave me a notation. However, I typed out this paper from the information which I received from the sender. At that time, I received the money from him. The exact amount was \$2,006.62. He told me the name of the party to send it to was Parlapiano, 90 Elizabeth Street, New York City.

608

This paper (Ex. 52 in evidence) was prepared by me on July 20, 1936, at the request of the same person of whom I have just spoken. He gave me the same address, the same amount, \$2,006.62, and told me to send it to Jim Parlapiano.

609

On February 17, 1937, at the request of the same party, I prepared this paper (Ex. 53 in evidence). He wanted me to send \$1,000.00. He furnished the name of the person to whom it was to be sent as Cola Gentile, 90 Elizabeth Street, New York City. At that time, he gave me \$1,004.22.

10 *Erwin J. Lucchesi—for Government—Cross*

On April 15, 1937, at the request of the same party, I prepared this paper (Ex. 54 in evidence). He wanted to send \$1,400.00 to Cola Gentile at 90 Elizabeth Street. I received from him the sum of \$1,405.12. All of the money which I received at these various times are deposited in the bank account at the Western Union in New Orleans. We wire the place where the money is destined and authorize them to pay it.

11 (Government's Exhibit 51 received in evidence, over objection and exception.)-

(Government's Exhibit 52 received in evidence, over objection and exception.)

(Government's Exhibit 53 received in evidence, over objection and exception.)

(Government's Exhibit 54 received in evidence, over objection and exception.)

2 *Cross Examination by Mr. Freehill:*

When a telegram is sent for the purpose of remitting money the practice is to fill out an application. If the employee of the company fills out the application, we do not ask for the signature or the initials of the sender unless we require personal identification of the payee. This requirement was waived in the case of Jerry Fradella, the man who sent these telegrams. On Governments Exhibits 51 to 54 inclusive, the waiver appears. If the sender waives, no signature is necessary. If it is desired that the payee be personally identified, then the sender must sign. Exhibits 51 to 54 were personally typed by myself. It is not a usual practice to

Erwin J. Lucchesi—for Government—Redirect

613

have the sender sign unless we wish identification of the payee. We merely allow the sender to read it over. I have identified a man named Jerry Fradella on the strength of the fact that Government Agent told me that his name was Fradella. This took place in New Orleans several months ago. At that time, he showed me a photograph and told me that the man's name was Fradella. He did not tell me that his name was Feraci. The name of the agent was Mr. Hedden. I saw Mr. Feraci the first day that he was in New York while he was sitting in the Court room with many other witnesses. He was identified when he answered the call of the Court.

614

After I typed these messages, another paper was filled out and sent by code to New York, I did not do that personally. I can tell by Government's Exhibit 51 to 54 that I transmitted all of them.

When I was last in New York, I did not have any discussion with Mr. Hedden about Feraci except to tell him that I had seen this defendant. That was after I heard him answer the roll call. Previous to that time, I had seen him about five or six months before.

615

Redirect Examination by Mr. Martin:

When I stated that I saw Feraci before seeing him in the Court room, I meant that I had seen him in the street. Mr. Hedden asked me if I knew the man whose picture he showed me and I told him that I did; that I knew the man by sight but did not know what his name was. He asked where I saw him and I told him that it was at the time that he had been filling out money orders.

16 *Erwin J. Lucchesi—for Government—Recross*
Eleanore Struiksma—for Government—Direct

I understand a few words of Italian. I do not understand what Parlapiano means.

Recross Examination by Mr. Freehill:

17 I do not speak Italian. Jerry Feraci speaks a few words of English. He presented the paper to me from which I got the names of payees on the telegram and I copied them. I did not keep that paper. I received about 900 telegrams a month for transmission. I am pretty certain that I can identify the people who come in to send messages. Of the 900 a month, about one half are brought in by messenger boys, I received about one half dozen telegrams a day over the counter, making an average of about 180 a month. I think I could identify anyone of these people within one year's time.

By the Court:

18 It is difficult for me to say how many times I saw Feraci in New Orleans before the trial. I know it was quite often. I would say about 50 times.

ELEANORE STRUIKSMA, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I know the man whose name appears as payee on this draft (Ex. 55 in evidence). I recognize and identify him in the Court room as the defendant, Charles Casesa.

Eleanore Struiksma—for Government—Preliminary Cross 619

I do not recall whether I was present when this draft was drawn. He was present at the time that it was cashed by Mr. Mazer at the Manufacturer's Trust Company, 122 Bowery Street. The draft must have been prepared either by myself or Mr. Mazer. This man called at the office of the Western Union on Delancey Street for the money. I have seen him several times in the office. As far as I recall, it was in connection with the obtaining of money and cashing checks.

Preliminary Cross Examination by Mr. Solomon:

I was in the Western Union office at the time this draft was presented. Mr. Mazer was there also. I had seen this man come into the office prior thereto. Mr. Mazer required identification from him; as far as I know he gave it. After that I had the money order cashed. I did not go to the bank. My name is not on the back of the draft. Mr. Mazer went to the bank with the man. I remained in the office. This man endorsed his name on the back of the draft in my presence. I believe he was in the office about ten or fifteen minutes. I cannot say how many more times I have seen him. We have an office record of each time a person comes in to cash a Western Union money order. We keep it in a monthly book. I do not have any difficulty in finding out how many times this man who is identified as Casesa has come in since March 31, 1936. I believe I can get our records without a subpoena. After this man left the office with Mr. Mazer, he did not come back. The last time I saw him was in the Spring of 1937. I have not seen him since.

I was with Agent Olivera about one hour ago. He

2 Eleanore Struiksma—for Government—Preliminary Cross

showed me a picture (Ex. C in evidence). He did not point this man out to me.

(Defendant's Exhibit C received in evidence.)

Mr. Olivera did not show me any other picture except this one (Ex. C in evidence). He asked me if I knew Mr. Carson and I told him I did. At the same time, he showed me the draft about which I have just testified. He said that man is Carson and I replied, "That is Mr. Carson". I did not inquire of Mr. Olivera whether I could see some other pictures. I did not tell whether the man was sitting in the Court room. I looked at this picture for about ten minutes. I made a complete study of the picture and the picture impressed itself in my mind so that I was able to identify the man from it.

(Government's Exhibit 55 received in evidence.)

I know a man named Cola Gentile. I have seen him in the Western Union office many times. I never cashed any drafts for him.

This (Ex. 19 for identification) is a photograph of a person I know as Mr. Gentile. I had a conversation yesterday with Mr. Olivera. He showed me a number of pictures. I picked out this particular one (Exhibit 46 in evidence) which is a picture of Mr. Gentile.

This draft (Ex. 56 for identification) was made out by me on January 22, 1936. The money which I received on the draft came from New Orleans, Louisiana. After I received it, I delivered it to the addressee. I do not know the address of the addressee. I do not know the name of the endorser.

Eleanore Struiksma—for Government—Preliminary Cross

625

This (Ex. 57 in evidence) is a draft which I prepared. I obtained the money for the draft from New Orleans, Louisiana on February 17, 1937. After I prepared it, it was delivered by messenger to Cola Gentile at 90 Elizabeth Street, New York City. I know who wrote the name on the back of this paper although I had not seen him write it.

(Government's Exhibit 57 received in evidence, over objection and exception.)

626

I prepared this draft (Ex. 58 for identification) on June 22, 1936. I got the money with which to prepare it from New Orleans, Louisiana. I sent it to Mr. Abruzzi after I prepared it.

I prepared this draft (Ex. 59 for identification) on June 20, 1937. The money, \$1300 came from New Orleans, Louisiana. After I prepared it I sent it out to be delivered to Cola Gentile at 90 Elizabeth Street.

Mr. Mazer prepared this draft (Ex. 60 for identification). I don't know whether I was present. I don't know the man to whom it was paid. This paper (Ex. 60 for identification) shows the money came from New Orleans, Louisiana, August 18, 1936.

627

Counsel stipulated that if Mildred Byrd were examined as a witness she would testify that she knows the defendant Joe Macey and that she introduced him to Agent Gude.

628 *Kathryn Phillips Traweck—for Government—Direct*

KATHRYN PHILLIPS TRAWEEK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

629 I am commonly known as Kathryn Phillips. I am a defendant in this action and have entered a plea of guilty. I am now awaiting sentence. I know a man named Vincent Gentiluomo. I recognize and identify him in the Court room. I have known him since the latter part of April, 1937, when he came to my house at 2602 Avenue E, Galveston, Texas, to sell me some narcotics. I had a conversation with him at that time. He told me that he was there to sell me some heroin. He said that a person named Joe Messina, known to me as Leo Attanasio, had sent him. I have known Joe Messina for several years. I recognize and identify him in the Courtroom. I told Gentiluomo that I did not understand why Messina should send him to my house because I had never had any dealings with him. Gentiluomo then asked me if I knew Sam Maceo. He told me that he was sent to me because he knew that I was a good dealer and I would buy narcotics from him. I made arrangements to do so. He then told me he would have to go back to the Schooner to obtain the narcotics. On his first visit, he brought 2 ounces of heroin to me and I paid him \$60.00. After that he sold me narcotics every other night for about a month. He brought me from 2 to 5 ounces of heroin, each time for which I paid him at the rate of \$30.00 an ounce. He brought other people to my house. The first was Anthony Virzi known to me as Frank Caputo. That was in the middle of June, 1937. Mr. Gentiluomo explained to me that he had a package store and that it was too inconvenient

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Kathryn Phillips Traweek—for Government—Direct

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for him to make delivery of the narcotics. He was, therefore, bringing a partner to take care of the narcotic business with me. After that, I dealt with Virzi.

I purchased an average of 3 to 5 ounces of heroin from Mr. Virzi every other day until July 26, 1937. Gentiluomo introduced me to August Simoncini at the same time that I met Virzi. I recognize Simoncini in the Courtroom. After July 27, I did not have any conversation with Virzi concerning narcotics because he left town. He brought other of his partners to do business with me. On several occasions Virzi invited me to go to New Orleans with him to obtain drugs because a New York man was supposed to be there. I never accompanied him to New Orleans. On one occasion, he brought me 11 ounces of heroin and it was not of good quality. I gave part of those narcotics to a girl named Katherine Allen.

632

I know narcotic Agent Clapper. I knew him under the name of Joe Martin. He was supposed to be a gambler from Dallas. I have had narcotic dealings with him. The first one was in July, 1937. At first I sold him 1 ounce of heroin. Then subsequently, I sold him 5 ounces and introduced him to Virzi. I called Virzi over the telephone, and he came to my house to discuss narcotics. In my bedroom at 2602 Avenue E in Galveston, I heard a man known to me as Joe Martin and Anthony Virzi discuss matters. That was on July 27, 1937, Virzi agreed to deliver narcotics to him in Waco, Texas.

633

I know a man named Biaggio Angelica and have known him since September, 1937. This picture (Ex. 61 in evidence) is that of Anthony Virzi known to me at this time as Frank Cavito.

(Government's Exhibit 61 received in evidence.)

634 *Kathryn Phillips Traweek—for Government—Direct*

This (Ex. 48 in evidence) is a picture of Biaggio Angelica. He was introduced to me by Vincent Gentiluomo. At the time of the introduction he came to my house and told me he was one of the people in the narcotic business. Angelica said that he had three ounces of good heroin and I bought it from him for \$90.00. I had no further dealings with him.

635 When I was dealing with the person whom I know as Joe Martin, I received money on two occasions from him for the sale of narcotics. Both of these sales took place in July. I received \$40 for the first ounce and \$175 for the second sale of five ounces. I took that money to the Turf on Market Street in Galveston where Sam Maceo exchanged it for me. The Turf is a night club which is owned by Mr. Maceo. I had a conversation with him at that time about exchanging the money. I told Mr. Maceo that it was money that I had just received for the sale of narcotics. He said he would exchange it for me and that if at any time I had money and did not want to keep it home, he would also exchange it for me. He introduced me to a man he called 636 "Fred" who worked at the Turf Club. He directed him to exchange any money that I brought. This person whom I knew as "Fred" I now recognize and identify as Jerry Feraci. I had a further conversation with Sam Maceo at that time concerning the defendants on trial here. Gentiluomo, Attardi, Simoncini and Leo Attanasio whom I knew as Joe Messina. I knew Attanasio. He was not present at the time of that conversation. I did not speak to him until after the arrest on October 5, 1937.

I know Attardi. He was not present when I spoke to Maceo. I recognize and identify him in the Courtroom. I never had any business dealings with him. I

Kathryn Phillips Traweek—for Government—Cross

637

did have a conversation with him and Mr. Simoncini about narcotics. They were once present at my house at 2602 Avenue E in June, 1937. Simoncini told me that if I kept on buying narcotics from him, that I would not be bothered and that I would have their protection. He told me that I need have no fear of talking before Mr. Attardi as he was one of the partners in the narcotic traffic.

I know Joe Passarello. I have known him for several years. Gentiluomo brought him to my house to sell me narcotics. This happened in October, 1937. I bought drugs from Passarello. I paid him \$50.00 on a narcotic debt that I owed to Anthony Virzi.

638

I know a woman named Kirksey. I purchased drugs from her in 1935. I made several small purchases at different times. In all I bought 11 ounces of heroin from Virzi. I telephoned Virzi in regard to these 11 ounces of heroin and asked him to come to my house. I told him that the heroin was bad and he replied that it contained some chemical that was being used in New York and that he had brought it to me just as it had been delivered to him. At one time, I used drugs myself.

639

Cross Examination by Mr. Kahn:

I have never had any transaction in narcotics with Joe Messina. I never bought any from him. The only times I heard his name mentioned was when Gentiluomo came to my house and mentioned it and when Sam Maceo mentioned it. I do not know of my own knowledge whether or not Joe Messina was engaged in the narcotic business. Messina was a business man in Galveston. I do not know whether or not he was prominent. I have been living

640 *Kathryn Phillips Traweck—for Government—Cross*

in Galveston since 1917. The only thing I know about Messina was that Gentiluomo told me that Messina had sent him down to me. I do not know whether or not that is true.

I testified at Galveston. At that time, I denied that I had been mixed up in some of these transactions. I had pleaded not guilty. At that time, I did not admit anything.

641

Cross Examination by Mr. Drescher:

I did not go with Virzi to New Orleans. He told me that a man from New York would be there. He did not tell me the name of that man. The only time I heard the address 90 Elizabeth Street was during the trial.

Cross Examination by Mr. Solomon:

642

I am married and I am living with my husband. I married him on July 8, 1937. My first husband is dead. I was convicted of the crime of selling narcotics in Dallas, Texas, in 1931. I have been back in the narcotic business for about a year. I do not remember who my source of supply was in 1931. At that time, I did not buy from Gentiluomo nor from Mr. Virzi nor Attardi nor from any of the people whose names I mentioned in my testimony. At that time, I was only in business for a few months. My sentence was one year and a day. After my release, I came back to Dallas.

My occupation is that of a nurse. I have been a registered nurse and I lacked only five months from becoming

Kathryn Phillips Traweck—for Government—Cross

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ing a graduate nurse. I have not practiced lately. I came to Galveston, Texas, in 1934. I rented a rooming house at 2602 Avenue E. I earned my livelihood by renting rooms. I took in some boarders. I was not in the narcotic business in 1934. I met my first customer for the sale of narcotics at 2602 Avenue E, my home in 1937. This customer was Katherine Allen. She had been living with me prior to that time. There were about four or five other people living with me who also bought narcotics from me. That was during the latter part of April, 1937. Immediately after I rented the house at 2602 Avenue E I began to buy narcotics from Mr. Gentiluomo. I did not know him before that nor have I ever done any business with him before that. I know he had a package store where he sold bottled liquor. He did business openly. I did not buy any merchandise there. I sold Katherine Allen narcotics before I met Gentiluomo. Those narcotics I obtained from Mike Sgitcavich.

644

Gentiluomo came to my house and introduced himself. He told me he wanted to see me on some business, so I took him into my room and he stated his business was concerning narcotics. I discussed narcotics with him although I didn't know him because of the reference that he gave me. I told him that I was getting my supply from someone else. He assured me that he had very good narcotics and that I would not be bothered if I dealt with him. He told me I could get in touch with him in the Schooner bar or in his package store. I went to the package store to give my orders.

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I do not speak Italian. I gave my orders in English. His prices were lower than that of other dealers. The first time he came to me, my only customers were the girls in the house. There were five or six other women who resided at that house besides Katherine Allen. Two

646. *Kathryn Phillips Traweck—for Government—Cross*

or three of the girls are married and had their husbands reside there. I was running a disorderly house. Agent Clapper did not threaten to arrest me for running a disorderly house. No agent ever threatened me.

On one occasion, Gentiluomo came to the house for an immoral purpose. I was not prosecuted for running a disorderly house. The agent knew I was running a house. Mr. Attardi did not come to my house for an immoral purpose. At the time of my arrest, I was not living at 2602 Avenue E. At that time, I moved out and was living with my mother and my husband. At the time of my arrest, one gun was found in my house. It had been given to me by my husband for protection as he is a seaman and is seldom home. At the time of my arrest, I did not give the name of every person in Galveston who visited my house for immoral purposes. This testimony of mine was not concocted in order to protect me for my arrest on a disorderly charge.

48 *Cross Examination by Mr. Freehill:*

When I met Mr. Maceo in Galveston at the Turf Club, I was there to exchange some money. There was nothing wrong with the money but I had sold narcotics for it and I did not want to keep it on my person. At that time, I was introduced to a man known to me as "Fred". I do not know whether "Fred" speaks any English. When I heard him speak it was not English. I did not have any conversation with him at that time except to thank him for accepting Mr. Maceo's order to exchange my money. I never had any narcotic dealings with him.

Kathryn Phillips Traweek—for Government—Cross

649

Cross Examination by Mr. Shapiro:

I entered into an agreement to violate the narcotics laws with Simonecini, Gentiluomo, Virzi and Attardi. At the time we entered this agreement, we sat down and talked things over. We had an understanding in June, 1937. I was arrested on October 5, 1937. I arrived in New York February 1, 1938. I was not out on bail. I was taken to the Marshall's Office and then to a hotel. I was released on my own recognizance. I was talking with Agent Olivera, and told him my story. I did not tell my story before I was released. I told my story several days after I arrived in New York. I had not told my story to anyone else prior to that time. At the time when I first arrived in New York, I was in the custody of the United States Marshal. I then went to a hotel. During that day, I spoke to Mr. Olivera. I told him that I wanted to tell the truth; that I wanted to live right, and he advised me to do so. I told him about the disorderly house and about the guns and about all the other transactions. It was after this was done, that I was released on my own recognizance. Since that time, I have been to Galveston. I returned to New York in March. I have never received any funds from the Government. The Government paid for my room and board. I did not receive a ticket from the Government to come to New York again. I have done special investigating in the narcotic department for the Government since February, 1938.

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By Mr. Martin:

I recognize and identify Mr. Sgiteavich in the Courtroom.

652 *Kathryn Phillips Traweek—for Government—Recalled
—Cross*

Cross Examination by Mr. Kaplan:

During the period that I was engaged in the narcotic business, I was working for myself. When I bought narcotics, I would take into consideration not only the price but the protection that I could get. I sold narcotics to those girls who lived in my house. My trade consisted mainly of these girls. I did not make any profit. I just made enough to buy again. I was an addict at that time myself. The only profit that I had was that it was enough for my own use. I never made any arrangements with any person to import narcotics into this country.

KATHERINE PHILLIPS TRAWEEK, recalled as a witness on behalf of the Government, testified as follows:

Cross Examination by Mr. Kahn:

654 I testified before Judge Colter at Galveston, Texas, on a removal hearing on October 19, 20, 21, 1937. My lawyer was Judge Austin. At that hearing I testified that I had met Leo Attanasio, commonly known as Joe Messina, and that I had been in his place of business, the Schooner; that I had gone there with parties of friends from in and out of town for the purpose of drinking; that I had been there two or three times; that is the only way I had met Joe Messina; that I had never had any business with him in reference to narcotics; that he did not sell, use, store or transport narcotics in any way. I testified at Galveston that I did not know that Attanasio was dealing in narcotics there. I also testified at Galveston that I had been introduced to Sam Maceo in 1923; that I had no close acquaintanceship with him in the last two

*Kathryn Phillips Traweck—for Government—Recalled
—Recross*

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years. I don't remember whether I testified that I did not know him well enough to recognize him until the day of our arrest. I remember a reporter taking down the testimony, but I don't remember whether I gave the last answer about recognizing Maceo.

Recross Examination by Mr. Freehill:

656

At the time that I gave my testimony at Galveston, Texas, I do not remember whether I answered that I did not know Sam Maceo enough to recognize him. But I do remember that I had testified that in the past two years, I had not had a close acquaintanceship with him.

By Mr. Martin:

I lived with Sam Maceo for a few months in 1923 as his common law wife.

Testimony given by witness Katherine Phillips at her removal hearing in Texas was read from the removal hearing in Texas.

657

She testified on October 19th, 20th and 21st, 1937, in Galveston, Texas:

I met Leon Attanasio, known as Joe Messina, at his place of business, the Schooner. I have been there with parties of friends in and out of town, drinking parties. That's the only way I know him. I visited his place different times. I never had any dealings with him of any nature or kind with reference to narcotics.

658

Joseph E. Goode—for Government—Direct

JOSEPH E. GOODE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a Federal narcotic agent. My post of duty is at Houston, Texas. I recognize and identify the defendant, Joe Macey. I have known him for a little over a year. I was introduced to him by Mildred Bird. When I met him, I told him I wanted to buy some heroin and he said he could supply me with it. Thereafter, I purchased four ounces of heroin and paid him \$160.00. That was on May 28, 1937.

I have seen this (Ex. 68 in evidence) before. I received it from Joe Macey on May 28, 1937. The next time I saw him was on June 6, 1937. Then I bought from him on June 20; again on July 1; again on July 7, and again on July 25, all in the year 1937. On the first occasion I bought four ounces. On the second—5 ounces; on the third—5 ounces; on the fourth—5 ounces of heroin and 1 ounce of morphine; then I bought another quantity of 5 ounces of heroin and one of morphine. Then I bought five ounces of heroin and 20 grains of morphine.

I received this (Ex. 69 in evidence) from Joe Macey on May 28, 1937. My initials are on this package. There are four smaller packages (Exs. 69-A, B, C, D in evidence) in this large one (Ex. 69 in evidence).

I received these (Ex. 70-A, B, C, D, E in evidence) from Joe Macey on June 6, 1937. I turned it over to Dr. Wiggins. There are five smaller packages in it.

I received these (Ex. 71-A, B, C, D, E in evidence) contained in this sealed package (Ex. 71 in evidence) from Joe Macey on June 20, 1937. My initials are on each of the packages.

There are six smaller packages (Ex. 72-A, B, C, D, E, F in evidence) in this sealed package (Ex. 72 in evidence) and I received them all from Joe Macey on July 1, 1937. I turned them all over to Narcotic Agent Wiggins.

There are six small packages (Ex. 73 a to f in evidence) in this large package (Ex. 73 in evidence). I received them from Joe Macey on July 11, 1937.

I received these five small packages (Ex. 74 a to e in evidence) contained in this package (Ex. 74 in evidence) from Joe Macey on September 8, 1937. My initials are on all the packages.

662

I received these ~~seven~~ small packages (Ex. 75 a to g in evidence), contained in this package (Ex. 75 in evidence) from Joe Macey on September 8, 1937. My initials are on all the packages. I turned them over to Inspector Wiggins.

I received these six inner packages (Ex. 76 a to f in evidence), contained in this package (Ex. 76 in evidence) from Joe Macey on September 8, 1937. After I received them, I turned them over to Inspector Wiggins.

663

I received these seven smaller packages (Ex. 77 a to g in evidence) contained in this package (Ex. 77 in evidence) from Joe Macey on July 25, 1937. After I received them, I turned them over to Inspector Wiggins.

Cross Examination by Mr. Zelenko:

At the time I was introduced to Joe Macey by Mildred Bird, she was a Government informer. By "informer" I mean we paid her expenses while she was in Houston. I advanced the money to her, and the Government reimbursed me for it. She was working for the Govern-

664

George L. C. Pratt—for Government—Direct

ment. I was also working for the Government. When I purchased the drugs, I told Joe Macey that I was going to peddle it in the oil fields. I then purchased these various exhibits about which I have just testified. I did not enter into a plan or agreement with him to violate the Narcotic Act. I was doing this in connection with my job. I purchased these drugs so I could obtain evidence against them for selling drugs.

665

Accompanied by other agents, I arrested Macey and I charged him with selling the drugs, the purchases about which I have just testified. These are the only transactions that I had with Joe Macey. When I had these transactions with him, the only ones present were Mildred Bird, myself and sometimes Macey's wife. I do not believe that his wife is one of the defendants in this case. I arrested his wife at that time in connection with these various exhibits, but she is not in Court now. She is under bond in Houston, Texas.

666

GEORGE L. C. PRATT, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am the supervising custom agent in charge at Galveston, Texas, and have been in the custom service for over 17 years. I assisted in the arrest of Joe Massa.

This package (Ex. 40 in evidence) contains four packages (Ex. 40 b to e in evidence) and nineteen envelopes (Ex. 40a in evidence). There are 23 items in all, which I found on October 5, 1937, in Joe Massa's residence at 1414 10½ Street, Galveston, Texas. I turned the packages over to Narcotic Inspector Harvey.

Katherine Allen—for Government—Direct

667

KATHERINE ALLEN, called as a witness on behalf of Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My name is Katherine Allen. I am at present in custody, serving a sentence for violation of the narcotic laws. My home is Galveston, Texas. I have lived there for about nine years. I know a woman named Kathryn Phillips. I lived with her at 2602 Avenue E. I know a man named Vincent Gentiluomo, who is present in the Court room. I know a man named Alphonso Attardi. I recognize and identify him in the court room. I have known Gentiluomo for about five years. During two or three months of 1937, I saw him almost every day at 2602 Avenue E, where I resided with Kathryn Phillips. I did not have any conversation with him. I never overheard any conversation he had with Kathryn Phillips, as he would go into her room. I never saw Alphonso Attardi in that house. I do not know any person named August Simoncini. I only met him in the house at Galveston. I see him in the Court room. I know Anthony Feraci. I have seen him in the house where I lived with Kathryn Phillips, although I do not recall how many times.

668

669

By the Court:

I saw Attardi and Simoncini in Galveston in the Court building. I had never saw them before. I used and received drugs from Kathryn Phillips. I did not receive them for any purpose but my own use. I received certain drugs from her to take to Dr. Etter for analysis. I did not use any of the drugs which I took down to the doctor.

**Katherine Allen—for Government—Cross—Redirect
—Recross**

Richard R. Harvin—for Government—Direct

Cross Examination by Mr. Solomon:

I did not always get my supply of drugs from Kathryn Phillips. I never bought any with my own money while I was with Kathryn Phillips. I paid her for them.

WI-671 Redirect Examination by Mr. Martin:

This (Ex. 48 in evidence) is a picture of Biaggio Angelica. I saw him once at the house where I lived with Kathryn Phillips. At that time Mr. Gentiluomo was with him. I had a conversation with him but it was not in reference to narcotics.

Recross Examination by Mr. Solomon:

WI-672 That house was used for prostitution purposes. I was one of the girls who performed acts with men for which I was paid. There was five or six other girls there.

RICHARD R. HARVIN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a narcotic inspector and I assisted in the arrest of the defendant, Joe Macey. I received this (Ex. 40 in evidence) from Joe Macey and I delivered it to Inspector Wiggin, agent at the Houston office.

C. D. Wiggins—for Government—Direct

673

C. D. Wiggins, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

By the Court:

It is stipulated that if Mr. Wiggins were called and sworn as a witness, he would testify that the exhibits marked for identification which prior witnesses testified they gave to him, were received by him and that he further turned them over to the Government chemist, Leslie J. Hoyt.

674

It is also stipulated that if Mr. Hoyt were called and sworn as a witness, he would testify that he received several parcels, turned over to him by Mr. Wiggins, and analyzed them, and the result of the analysis is as presented by the District Attorney.

The following Government's Exhibits were received in evidence: 29, 1-B, 4, 5-A, 6-A, 7-A, 9-A, 29, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77. Exception to all of the defendants.

675

It is further stipulated that all of the above exhibits are drugs containing either opium or derivatives of the coca leaf. It is further stipulated that there are 437½ grains to an ounce.

676 *Julian G. Welliver—for Government—Direct—Cross*

JULIAN G. WELLIVER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My home is in Houston, Texas. This (Ex. 48 in evidence) is a picture of Biaggio Angelica. This (Ex. 20 in evidence) is of Anthony Lima. I do not know the name of the person whose picture (Ex. 46 in evidence) is shown me. I do not know the name of the person whose picture (Ex. 19 for identification) is shown me.

I have known Biaggio Angelica for about nine months. I have known Tony Lima for the same length of time. At Isidor Cavaretta's house, at 122 West Street, Houston, they were all together with Luigi and Isador on a screened-in porch. I saw these men in company of some of the defendants on trial, on July 30, 1937. At that time Biaggio Angelica went to Joe Macey's house at 1439 Munger Street, Houston, Texas. I saw Anthony Lima in company of August Simoncini and Alphonso Attardi in Galveston on August 5, 1937, at 3502 R $\frac{1}{2}$ Street, Galveston, Texas. Those premises belonged to Alphonso Attardi. I recognize and identify Attardi and Simoncini, in the Courtroom.

Cross Examination by Mr. Solomon:

I am a narcotic agent. Attardi lived at 3502 R $\frac{1}{2}$ Street. I saw these people on the front porch in open view. I have people come to visit me at my home and there is nothing wrong about that.

Julius Fitch—for Government—Direct

679

JULIUS FITCH (Alias **JULIUS ETTIE**), called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am now serving a sentence for violation of the Drug Law. I was convicted in Galveston, Texas. I bought drugs during the last three years from Sam Maceo. I do not remember the exact date, but it was about the first part of September in 1937. I purchased 18 ounces of heroin. Kathryn Phillips was present at that time. 680

About the 15th or 16th of the same month, and the same year, I purchased 25 ounces of heroin from Sam Maceo. No one else was present at the time. I had been purchasing drugs from Slim McDonald, Joe Passarello and Leo Lera. I bought drugs from Joe Passarello after October 5, 1937. Leo Lera was present at that time.

I purchased drugs from Slim McDonald occasionally, about 5 ounces at a time. I know a man named Biaggio Angelica. I have never had any business dealings with him nor have I spoken to him. I know a man named Fletcher. He was a partner of mine in the drugs business. I paid for the drugs which I purchased from Sam Maceo, as I sold them. The first time I paid him \$360.00. The second time I paid \$500. Maceo delivered the drugs to me in a package in the Galveston Hotel where he resided. He delivered them to me personally. Fletcher was never with me when these purchases were made. 681

By the Court:

I was in partnership with Fletcher for two weeks.

682

Julius Fitch—for Government—Cross
Clay Fletcher—for Government—Direct

Cross Examination by Mr. Solomon:

683

My name is Fitch. I purchased drugs from Slim McDonald and Joe Passarello. I do not know if they were partners. I obtained drugs from Slim McDonald at the Galveston Hotel where he was residing with me. We did not occupy the same room. When I wanted drugs, he brought them to me. I never went to his room to obtain them. Joe Passarello brought me drugs on the street. I never went to his home to obtain them. After I sold the drugs, I paid Passarello. I am not an addict nor have I ever used drugs. I was in the drug business for about three or four weeks when I met Slim McDonald and Joe Passarello. I know Kathryn Phillips. I have gone to her house. She kept a house of prostitution. I did not go there for that, however. I went for narcotics.

By Mr. Kaplan:

684

When I testified that I was buying drugs from Sam Maceo, I did not mean the defendant, Joe Macey, who is on trial now.

CLAY FLETCHER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

This (Ex. 48 in evidence) is a picture of Biaggio. I never did any business with him. I have known him for about four years. The last time I visited him was in August, 1937. I went to see him and he told me he did not have any narcotics but he knew a boy that I could

Clay Fletcher—for Government—Cross—Redirect
Floyd Godrich—for Government—Direct

685

go to see. He took me uptown and I waited on the corner and this boy sold me 7 ounces. The boy's name was Joe. I do not know his last name. I do not know whether Joe had a partner.

I had a partner at that time. He was Frenchie Etie.

Cross Examination by Mr. Kahn:

686

This took place in Houston. I do not know Joe's last name as I have never heard it. He was a man about thirty-five or thirty-eight years old.

Redirect Examination by Mr. Martin:

This (Ex. 78 for identification) is a picture of a man whom I recognize as Joe Passarello.

This is not the Joe about whom I have just testified. I do not see that Joe in the Courtroom.

687

FLOYD GODRICH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a custom inspector stationed at Galveston, Texas. This (Ex. 20 in evidence) is a picture of a man who was pointed out to me as Nicola Gentile. I do not know the name of the man on this picture (Ex. 46 in evidence).

688

Emma Cecelia Kirksey—for Government—Direct

I do not know whose picture (Ex. 19 for identification) this is.

Counsel for Government and Counsel for Defendants conceded that the man whose picture appears on Government's Exhibit 20 is not the man who was named by the witness.



689

EMMA CECELIA KIRKSEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a defendant in this indictment and I have entered a plea of guilty. I am now awaiting sentence. I have previously been convicted of violating the Narcotic Laws. This (Ex. 48 in evidence) is a picture of Biaggio Angelica whom I knew as Angelo. I knew him for about three years and I had business dealings with him. These business dealings took place in Houston, Texas from about May or June, 1935, until December, 1937. I purchased about 10 ounces of narcotics from him at a time. This (Ex. 61 in evidence) is a picture of Virzi whom I knew under the name of Tony Nanino. He was introduced to me by Biaggio Angelica. Angelica told me that thereafter Virzi would bring the narcotics to me and that I should pay Virzi, which I did. I wired Virzi money on two different occasions. I do not remember the date. This paper (Ex. 79 for identification) is in my handwriting.

I had further conversation with Biaggio Angelica concerning drugs at my place in Houston. I went over to his house at 327 West Belle Avenue, several times

Kate Brewer—for Government—Direct

691

and he came to my home sometimes. He wanted to collect part of the \$400.00 which was due Virzi. As I would not do so, he brought a second person with him to assure me it was all right. I do not see the other person in the Courtroom at the present time. Virzi said that this other person named Sam would deal with me instead of Verzi. I had further conversations with Angelica concerning drugs. He told me where the drugs came from.

By the Court:

692

He told me that the drugs came from New York.

By Mr. Martin:

I know the man whose picture (Ex. 49 in evidence) is shown to me.

This telegram (Ex. 79 for identification) is in my handwriting. I delivered it to a messenger boy who came in response to my call to the telegraph office. I also gave the boy \$112 to transmit.

693

KATE BREWER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My home is in Houston, Texas. On January 1, 1937, I had an apartment house which was located at 1416 Austin, Houston, Texas. I recognize the man whose picture (Ex. 61 in evidence) you show me. He is the person who gave his name as Mr. F. Russell. Another man who was with him gave his name as Messina. I do

694 *James R. Davidson—for Government—Direct*

not know whether I can now identify that tenant as I only saw him about three or four times, and he came in late at night to pay his rent. I am sixty-six years old and my hearing is impaired. My eyesight is very good. I have looked at everyone in the Courtroom.

JAMES R. DAVIDSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

695 *Direct Examination by Mr. Martin:*

I am a City detective from Houston, Texas. I know a man named Vincent Vallone. I recognize and identify him in the Courtroom. He lives on a rural route on Chocolate Bayou Road.

This (Ex. 81 in evidence) is a picture of the home where Mr. Vallone resides.

(Government's Exhibit 81 received in evidence, over objection and exception.)

696 I have been to the home of Mr. Vallone. I have seen some of the people in Court at his home. I recognize and identify the defendant, Simoncini in Court. I saw him on August 10, 1937. On that occasion, I also saw Angelica Biaggio, Isidore Cavaretta, Alphonso Attardi and Tony Lima. This (Ex. 48 in evidence) is a picture of Biaggio Angelica. I do not know the name of the man on this picture (Ex. 20 in evidence). I observed all the above named persons at Vallone's house for about three hours from 1 o'clock until 4 o'clock on that day.

Cross Examination by Mr. Kahn:

I am a Policeman in Houston, attached to the Narcotic Division. I had never been in Mr. Vallone's home prior to the morning on which he was arrested. At that time, I was in his house. I know that Biaggio Angelica married Mr. Romeo's daughter. (This is not the Romeo heretofore mentioned in this case. This Mr. Romeo has a repair shop in Houston.) I do not know that Mr. Vallone and one of his sons stood up for Angelica at the wedding. I have heard that Vallone was sick in July of last year. I do not know what all these people were doing at his home. I only observed them on the front porch. I was there the morning of the arrest. He has three young children living with him at his home, and there are quarters for all of them. I do not know whether the group had eaten on the day that I observed them, as I only observed them in the afternoon from about 1 o'clock to 4. They had all been sitting on the front porch and talking. I do not know whether they were out there at the time when Mr. Vallone's brother was sick. I was not at Mr. Vallone's home when Mayor Hedge was there, nor when ex-Mayor Campbell had been there. Nothing occurred when I observed those people on Mr. Vallone's porch. Biaggio Angelica is still in Houston I think. I saw him there about a week ago. I left Houston several days ago. When I went out to make the observation of Mr. Vallone's house, I was accompanied by Inspector Wiggins, Agents Willford, Pocorova and Good. We had followed Biaggio Angelica and Cavaretta to that house. I do not know what they were talking about.

700

James R. Davidson—for Government—Cross
Dimond Athanasiow—for Government—Direct

Cross Examination by Mr. Solomon:

701

I do know Tony Lima. I remember being asked on direct examination about the people that I saw on the porch, and I recall being asked about Tony Lima. I do not know him by name. I had taken his automobile license number and checked it. The only time I saw him was from a distance. I do not know him personally. I think I would be able to identify him from a picture. This picture (Ex. 20 in evidence) is not the man I knew as Tony Lima. (Ex. 20 in evidence is a picture of Tony Lima.)

DIMOND ATHANASIOU, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

702

During the summer of 1937, I was a bartender at the Schooner on 20th and Market Streets in Galveston, Texas. That place was conducted by Leo Attanasio. I am not related to him. I recognize and identify Mr. Attanasio in the courtroom. I know a man named Attardi. I recognize and identify him in the Courtroom. I know a man named Simoncini whom I recognize and identify in the courtroom and also a man named Feraci whom I recognize and identify in the Courtroom. I have seen all of these men together at the Schooner on more than one occasion. I do not remember the exact date except that it was in the summer part of the year, 1937.

Dimond Athanasiow—for Government—Cross—Recross

703

Cross Examination by Mr. Shapiro:

I do not know that Simoncini was a bookkeeper or a gambler at the Schooner.

Mr. Feraci and his family were visiting Attanasio during the summer of 1937 in the latter part of July or August.

Cross Examination by Mr. Kahn:

704

Annabelle is not my nickname. It is the name of one I used to work with. I have been working for Mr. Attanasio for about four and a half years. I have never seen him sell narcotics nor have I ever heard of him selling narcotics nor have I ever heard him talk about narcotics. Simoncini, Attardi and Virzi came into the place just like any other customers. In that place, a person can obtain food or beer. Next door is what is known as a package store which was run by Mr. Gentiluomo.

705

Recross Examination by Mr. Shapiro:

My working hours were from 7 A. M. to 6 P. M. These persons whom I have just mentioned, I have seen talking together, but they did not always come in together. They were customers who came in to eat or drink. While I was employed there, I never heard of any transaction in which Leo Attanasio had been mentioned in connection with narcotics. I do not think he can read or write. He had a bookkeeper then.

I have never heard that Attanasio was selling nar-

706

Grady Avant—for Government—Direct

coties. I never heard of a woman by the name of Marie Costello.

GRADY AVANT, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

707

708

I am an agent of the Narcotic Bureau of the Treasury Department, attached to the custom service since 1925. This (Ex. 46 in evidence) is a picture of Nicola Gentile. This (Ex. 20 in evidence) is a picture of Anthony Lima. I recognize and identify the defendant Simoncini in the Courtroom. I also recognize the defendant DiMaggio. I know a man named Attardi. I recognize and identify him in the Courtroom. I saw these people together on August 5, 1937, in Mr. Attanasio's house at 3502 R $\frac{1}{2}$ Street, Galveston, Texas. Mr. Gentile was driving a black Buick Coupe at that time. The men were standing in front of the house when I first passed by and I drove down the street, turned back and parked across the street from Mr. Attanasio's home. I stayed there for several minutes and watched them talk. Mr. Gentile got into the Buick coupe and drove off. Mr. DiMaggio and Mr. Lima got into a LaSalle Sedan and also drove off. They had put a suitcase into the LaSalle and also had Mr. Attardi as a passenger. I do not know where Mr. Simoncini went. He was not in either of the cars. I have seen Anthony Lima driving the LaSalle sedan with Louisiana license No. 450 120. I saw that car parked on August 4, 1937, in front of Mr. Simoncini's house at 3616 F $\frac{1}{2}$ Street. C

Grady Avant—for Government—Cross
J. Ray Olivera—for Government—Direct

709

Cross Examination by Mr. Solomon:

I heard no conversation between these men. I saw them get into the car and drive off.

Cross Examination by Mr. Edelstein:

I have testified that the same people that went into the car had a suitcase with them on August 5. The car was a black LaSalle sedan. All together there were three people in the car. Mr. Lima was driving. I believe Mr. Attardi was the one who put the suitcase in the car. Mr. DiMaggio was in the front seat with the driver. It was a five passenger car but only two were in the front seat. The suitcase was put in the back of the car by Attardi.

710

J. RAY OLIVERA, called as a witness on behalf of the Government, being duly sworn, testified as follows:

711

Direct Examination by Mr. Martin:

I am a narcotic agent and have been in the Government service for about twelve years. I did not arrest the defendant Colagerio Iacona, although I know him. On October 8, 1937, I spoke with him while he was at the Columbus Hospital. I believe that he was arrested a day or two after this conversation. I also spoke with Mary Carussotto, Jimmie DiMaggio and Josephine DiMaggio at the time of their arrest.

712

John Blangiardo—for Government—Direct

JOHN BLANGIARDO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a steamship agent and the name of my firm is Blangiardo and Palmeri, which is a partnership conducting business at 96 Elizabeth Street;

713

I speak Italian very well. I received this paper (Ex. 60 in evidence) from Parlapiano. I do not know where Parlapiano lives. He has a business near 88 Elizabeth Street. I do not know whether he has a business at some other address. I do not know if this man lives at 90 Elizabeth Street.

By the Court:

I have known Mr. Parlapiano for about six years and have seen him everyday. He is not in the Courtroom at the present time.

By Mr. Martin:

This (Ex. 19 for identification) is a picture of Mr. Gentile. I received this paper (Ex. 85 for identification) from him in May, 1937. I don't know if I or my partner received this check, as my signature isn't on it.

I do not know whether Nicola Gentile was in business. I used to see him in the neighborhood, and when he came into my place. I never visited him anywhere else. My handwriting is on this paper (Ex. 86 in evidence). The name which appears before mine is that of Mr. Iacono who is in Court here. (Witness identifies defendant Iacono.) I remember him giving me this paper and holding a conversation with him in which he

John Blangiardo—for Government—Recalled

715

requested that I put the check through the bank. This was done in the beginning of April, 1936.

(Government's Exhibit 86 received in evidence.)

This draft (Ex. 87 for identification) was deposited in the account of my firm. After we received the money, I gave it to the man who brought the check. The writing says that it was Nicola Gentile.

I do not know a person named Tony Marino. I know Mr. Olivera. I met him in the Courtroom. I do not know a man named Tony Marinelli. I do not know any bartender whose name was Tony. Mr. Parlapiano, shown on this picture (Ex. 60 for identification) is not a bartender. He is a tinsmith. I know the bartender at 90 Elizabeth Street. His name is Charlie.

716

Counsel for Government and defendants stipulated that if one Mr. Humphreys the General Manager of the Western Union were called to testify, he would testify that any and all records of the Western Union produced or given to the United States Attorney or the Government Agent was only after the service of a subpoena Duces Tecum served upon him and that prior thereto, he released no information as to their contents except that a search was made for certain names for which the Government paid.

717

JOHN BLANGIARDO, recalled as a witness on behalf of the Government, testified as follows:

By the Court:

This name on this paper (Ex. 88 in evidence) ap-

718 *John Blangiardo—for Government—Recalled—Redirect*

pears to be in Mr. Iacono's handwriting. It seems to be the same writing as that on that paper (Ex. 86 in evidence). This morning I did not testify as to the handwriting on that paper (Ex. 86 in evidence). I only stated whose name was on there. It (Ex. 86 in evidence) was written in my presence. I don't remember whether I testified this morning that the name was written in my presence. The handwriting on both papers looks the same to me. I know we gave the money to the same man.

719

I have known that man for about six years and have seen him every day during that time. He came in about 4 or 5 times in 6 years. Many times, he sends money orders to his wife. He sends foreign money orders.

(Motion made to withdraw and exclude Ex. 86 in evidence. Denied. Exception.)

720

Redirect Examination Continued by Mr. Martin:

I conducted a steamship agency business. I do no banking. I sell money orders for the Cunard Line. I also cash checks for people I know. Sometimes I require that the people write their names in my presence, and sometimes the names are already signed. I cannot recall whether Colagerio Iacono wrote his name on any checks that I cashed or gave me as that was a long time ago.

By Mr. Martin:

The rubber stamp on this paper (Ex. 90 in evidence) is mine. The signature is not. It is that of my

John Blangiardo—for Government—Recalled—Cross

721

partner. The money represented by this check was given to the owner of it. I did not do that personally. My partner has been sick and is away at the present time. I did not see my partner write his name but I know his signature. The other signature looks like that of Mr. Iacono, although I did not see him write his name.

Cross Examination by Mr. Edelstein:

722

There is one person employed at my office. That person together with my partner and myself carried out the business. I am not always present. My office is open from 8:30 to 6:30. The last signature on this paper (Ex. 86 in evidence) is mine. I took the check. Whenever we deposit a check we put the firm's stamp on it. Sometimes we stamp it immediately and sometimes when we put the money in the bank. I assumed that I cashed it because it contains my signature. I do not remember whether I delivered the money myself or not. If my signature is on the back, I must have received it. The reason that I cannot state that I delivered the money is that as a matter of practice, we do not pay out until the check has come through the bank. In my neighborhood, we cash checks for a number of people. Sometimes checks are presented with the endorsement or the name of a person whom I know although that party does not always appear in person. If a person comes to me and asks if I will cash a check into his name on it if he sends someone over with it, then I will cash it "on his say so". I have quite a number of such customers.

723

Motion renewed as to exclusion of Ex. 86 in

724

Marie Costello—for Government—Direct—Cross

evidence. Denied. Exception.

MARIE COSTELLO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

725

I know Vincent Vallone. I recognize and identify him in the Courtroom. I know a woman named Kathryn Phillips and have lived at her house at 2602 Avenue E since 1937. I know a man named Gentiluomo whom I recognize and identify in the Courtroom. I saw him at the house where I lived but I never had a conversation with him. For a month and a half Gentiluomo made several visits to the house himself. He had narcotics with him and he delivered them to Kathryn Phillips. He also visited there accompanied by Simoncini and Virzi. I recognize and identify Simoncini in the Courtroom. I know the man whose picture (Ex. 61 in evidence) this is, Frank Cavito, also known as Anthony Virzi. I never had any conversations with Simoncini, Virzi or Gentiluomo. I used drugs during the years 1936 and 1937. This (Ex. 81 in evidence) is a picture of Vincent Vallone's house. I was there once accompanied by my boy friend whose name is Malvin Crowe.

726

Cross Examination by Mr. Kahn:

I came from Texas about two weeks ago. I had been in the custody of Mr. Olivera. He paid my railroad fare, room and board. I live in Houston at the present time. I had been living at Kathryn Phillips home. I was

hustling, there from about May until the middle of September, 1937. She sold me drugs which I used all the time while I was there. I have not used drugs this year. Vincent Vallone lives on Chocolate Bayou Road. I do not know how to get there. I know the house when I see it. I have just now been shown a picture of the house and I have seen the picture once before. It was shown to me by Mr. Olivera this morning.

Mr. Olivera did not tell me it was Mr. Vallone's house. He told me that was a house he built at Puerto Rico. He asked me how I liked the house he built at Puerto Rico. I have lived in Houston since I moved from Galveston in January. Prior to this year, I lived in Houston from 1933 until 1936. I remember when I left Galveston to go back to Houston in January, 1938. I was in Galveston during the entire year of 1937, although I had made several trips to Houston to go the new pictures and also to go to Mr. Vallone's house. I went there about the middle of October, 1937, after the big raid in Texas. After they had all been arrested on October 5, 1937, I was invited to go to Mr. Vallone's house by my boy friend, Malvin Crowe. I did not go into the house. I did not have any dealings with Mr. Vallone. I did not buy anything from him nor had I ever done so. In Houston, I lived at 210 Chartres Street in a house of prostitution in the Mexican neighborhood. I never hustled in the streets at night. I have never been convicted of any crime in Houston or Galveston. I was never convicted of theft. The house that I lived in at Houston was between Congress and Franklin. I have no idea how far that is from Mr. Vallone's house.

730

*Marie Costello—for Government—Cross**Cross Examination by Mr. Solomon:*

Kathryn Phillips was living with me in New York and has been living with me since I came up from Texas. I was working at Kathryn Phillips house. She was supplying me with drugs. I never received a package of drugs from Gentiluomo. I never saw him take drugs into the house nor did I ever give him any money for drugs. I have previously testified on direct examination that I saw him bring drugs and narcotics into the house although I had never personally seen him do so. Nobody told me that he did so, but before he came there were never any drugs. Kathryn Phillips never gave me any of my earnings. I never had any money to buy drugs in my own account. They were supplied to me by Kathryn Phillips.

731

Cross Examination by Mr. Shapiro:

I have testified that I saw Mr. Simoncini at the home of Kathryn Phillips almost every other night for about a month and a half. He never gave me any drugs and I never paid him any money.

732

By Mr. Martin:

I came here in response to a subpoena. I am a witness and not a prisoner. I am free to go wherever I wish during the day and I am not in anyone's custody.

Robert R. Boyd—for Government—Direct

733

ROBERT R. BOYD, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

My name appears as that of the issuing officer on this draft (Ex. 91 in evidence). The draft was issued on April 19, 1937, at the Western Union office where I am employed as office manager, 143 East 23rd Street, New York City. From looking at this draft, I cannot say exactly what I did as far as receiving it is concerned. Sometimes a draft is delivered by messenger. Sometimes a notice is delivered and the payee of the order calls. But in either case, when payment was made, I make it to the addressee at the counter. I paid the money to Josephine Attardi. I believe I know her. I see her in Court.

734

By the Court:

The money came from Houston, Texas.

By Mr. Martin:

735

I do not know the person who sent it. I can only tell from the record as it is forwarded to me.

(Government's Exhibit 91 received in evidence.)

I issued this draft (Ex. 92 in evidence) to Mary Carussoto. I recognize and identify Mary Carussoto. I paid the money to her on June 26, 1937.

(Government's Exhibit 92 received in evidence.)

I issued this draft (Ex. 93 in evidence) I paid it to

736

Robert R. Boyd—for Government—Cross
Esther Mantel—for Government—Direct

Mrs. Attardi on May 4, 1937.

(Government's Exhibit 93 received in evidence.)

737

I did not cash this draft (Ex. 94 in evidence) approved it for payment. I know the person to whom it was paid as I was present when the payment was made. One of my clerks was present at that time. She, Miss Mantel, made out the draft correctly to G. Attroad. This woman who cashed it was identified as G. Attroad. The paper had previously been made out incorrectly. When I came into the office, I approved the draft and gave it to Attardi who took it to the bank and cashed it. That person was Mrs. Josephine Attardi.

(Government's Exhibit 94 received in evidence.)

Exception.

Cross Examination by Mr. Solomon:

738

All that I know about these Western Union money orders on which appears the name of Josephine Attardi is that someone came into my office and the check was turned over to whomever came in and identified himself. I do not know what the transaction was.

ESTHER MANTEL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am employed by the Western Union Telegraph Com-

Isabel Rose—for Government—Direct—Cross

73E

pany as a teleprint operator at 60 Hudson Street. This draft (Ex. 94 in evidence) was made out by me and my name appears on the face of it. I do not recall who presented it to me. I have no independent recollection of this draft. I know the man whose name appears on the reverse side of the draft. He is the manager of the office where I worked at the time; I do not recall who presented the draft to me.

ISABEL ROSE, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

74C

Direct Examination by Mr. Martin:

I am employed by the Western Union as an operator and clerk at 277 7th Avenue. On one occasion I worked at the office on 23rd Street. At that time, the manager was Mr. John Stone.

This draft (Ex. 95 in evidence) was prepared and signed by me on December 17, 1936. I cashed it at the counter. I cashed it for a lady whose name appears thereon. I do not know her personally. I believe that this woman might be that woman (indicating Mary Carussotto).

74J

The woman to whom I turned over the money signed it in my presence.

Cross Examination by Mr. Edelstein:

I recognize and identify the person who cashed this draft (Ex. 95 in evidence) as Mrs. Attardi. I was mistaken when I previously identified Mary Carussotto.

742

Edith Fox—for Government—Direct

Conceded by counsel that Mrs. Josephine Attardi received payment of this draft (Ex. 95 in evidence).

(Government's Exhibit 95 received in evidence.)

EDITH FOX, called as a witness on behalf of the Government, being duly sworn, testified as follows:

743

Direct Examination by Mr. Martin:

I am a daughter of Mrs. Brewer. I do not live with her. I visited her during the years 1936 and 1937. I lived in the same suite. I think I know a man named Messina. He rented an apartment from my mother at 1416 Austin. I believe it was April or May of 1937. The apartment was furnished. I believe he lived there alone. He was joined by someone else, some friends who had come from New York. Their names were Mr. DiJohn and his wife and another friend, Mr. Russell. I know the man whose picture (Ex. 61 in evidence) this is. I think it is the man who rented apartment No. 7. His name is Frank Russell. I think I recognize one of the defendants in the Courtroom as Mr. Messina. I believe that he had No. 3 apartment at 1416 Austin, Houston, Texas.

(The witness identifies August Simoncini as Mr. Messina.)

By the Court:

I did not see that person in the apartment more than once or twice. That is the only person whom I recognize in Court who was at my mother's place.

Paul K. Holland—for Government—Direct

745

By Mr. Martin:

I do not recognize Mr. Dijohn as being in the Court-room.

PAUL K. HOLLAND, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

746

I am a Customs Patrol Inspector, assigned to Houston, Texas. I know the defendant Alfonso Attardi and recognize him in the courtroom. I have known him since August 7, 1937. On that day I saw him on the porch of his home at 3502 R¹/₂, Galveston, Texas. In his company were Mrs. Attardi, Messrs. Simoncini, Biaggio, Angelica, Joe Passarella, Gentile, Tommy Siracusa and Di Maggio, and Virzi.

I kept that house under observation from August 7 to August 15. On the night of August 7th I was there until 2:30 A. M. All those men were there talking from 8:10 to 9:15 P. M.

747

About 9:25 P. M. Passarello, Simoncini, Angelica and Attanasio left the premises.

On August 7 I saw Virzi drive up to the house in an auto. Later Feraci arrived.

This (Ex. 20 in evidence) is a picture of Anthony Lima.

Mr. Lima had an auto which I saw in front of Attardi's house on August 7. I did not recognize the person in it on that day.

748

Paul K. Holland—for Government—Cross

The next day I observed Mr. Di Maggio operating that car about 8:30 A. M.

I recognize and identify Mr. Di Maggio in the courtroom.

On August 9 I saw Jerry Feraci driving his auto. On August 10 I saw Simoncini, Feraci and Attanasio at Attardi's house.

The following day Feraci and Maceo came to the house.

749

This (Ex. 98 for Identification) is a picture of Sam Maceo.

(Exhibit 98 received in evidence.)

I recognize and identify Mr. Attanasio in the courtroom and also Jerry Feraci.

This (Ex. 46 in evidence) is a picture of Mr. Gentile. The license number of his auto was New York 198.

750

Cross Examination by Mr. Kahn:

I was observing the house of Alphonse Attardi at 3502 R $\frac{1}{2}$ Avenue from the dates August 7 to August 15. On the evening of the 7th, various people came to Mr. Attardi's house, to depart at intervals, at 2:30 A. M. At that time, there were still some people on the porch but I departed. I was about 60 or 70 feet from the house on Avenue R $\frac{1}{2}$. There was a large overhead light on the porch. I do not know if they had a dinner there. I did not see them eating. I am sure that there was no dinner there. I am positive that they sat on the porch from 8:15 P. M. until 2:30 A. M. the following morning. They went in and out the house individually. I do not

Josephine Williams—for Government—Direct

751

know what was done inside the house. The women left the premises about 7:50 P. M. Mrs. Attardi, Mrs. Simoncini and their children walked down 35th Street toward the beach. They came back about 10:30 P. M.

I got out to Mr. Attardi's house about 5 P. M. I watched it from 5 o'clock until 2:30 in the morning. Nobody else was with me. I did not hear what was said. All I heard was a murmur of conversation. They did not talk English. I was close enough to distinguish the fact that they were not talking English. Present at that time on the porch were Mr. Attardi, Mr. Simoncini, Mr. Angelica, Mr. Di Maggio, Mr. Virzi and Mr. Attanasio. Until 10:30 o'clock in the evening there were no women present on the porch or inside the house. I was able to ascertain that they were drinking out of glasses. I do not know whether a party was taking place at that time or not. I do not know what these people were doing.

752

JOSEPHINE WILLIAMS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

753

Direct Examination by Mr. Martin:

My home is in Houston. I live with Mrs. Brewer. I knew a man named DiJohn. There was an introduction by Mrs. Brewer. I recognize and identify the defendant Attardi as the man whom I knew as Mr. DiJohn. There is no one else in the courtroom whom I knew in Texas. I know the man on picture (Ex. 61 in evidence). I believe I knew him under the name of Russell, I saw him in Mrs. Brewer's apartment house in Texas. I did not enter the room until after the men moved out.

54

*Josephine Williams—for Government—Cross**Cross Examination by Mr. Zelenko:*

I met the man whom I have just identified (Attardi) in May or June, 1937. I have not seen him since that time. Today is the first time since that time that I have seen him. I was standing in the doorway of this courtroom about two hours ago, with Mrs. Fox and Mr. Avant. I met him for the first time last Friday. I have been with him every day in the courtroom. I just happened to follow him into the courtroom before the afternoon session of Court opened. When Mr. Avant, Mrs. Fox and myself were standing in the doorway, I told them that I had never been in a courtroom and would like to look in. Mr. Avant did not point his finger in any direction. Mr. Avant did not indicate the man whom I identified. I did not have any conversation with Mr. Avant before that time. I walked away from the doorway of the courtroom and I do not remember when I came back the second time. Mr. Avant did not tell me whom to identify. He told me to identify the ones that I knew. I do not remember what was said in the conversation at that time about identification. I just told him I know the man whom I have identified from the witness stand. I had told Mr. Avant that I knew that man. Mr. Avant did not tell me that the man was wearing a brown suit and green tie. I saw him in my apartment about fifty times. I have not been shown his picture since that time. No United States Agent showed me his picture. I told the United States Agent whom I was going to identify but I did not describe the person. I merely told him that I was going to identify Mr. DiJohn. That is the only name I knew him by.

55

56

Josephine Williams—for Government—Cross

757

Cross Examination by Mr. Solomon:

I do not know the exact date that Mr. DiJohn came down to the apartment. I think it was July or June when he came from Galveston. The apartments were all furnished and contained two or three rooms each. I am sure that it was not in the month of August or after that I saw him. I believe it was in June or July, and I saw him about fifty times during those two months. Mrs. Brewer who owned the house saw him there also. I know Mrs. Fox who is Mrs. Brewer's daughter. She came to visit in June or July on the morning that Mr. DiJohn came up from Galveston. He came to my apartment with another lady. There are sixteen apartments in the house.

758

I do not remember when it was the first time that I spoke to anyone about this case. No one spoke to me about this case in Galveston, but they did in Houston. Mrs. Brewer was the one. I do not remember when was the first time that anyone spoke to me about a Mr. DiJohn. I cannot tell who the first person was that I told that I knew Mr. DiJohn. A man named Ellis Benford came to my home. He took us to the Federal Building. He asked me whom I knew and also who lived in the apartment house. I did not give him the names of all the people who lived in the apartment. I told him that there was a Mr. DiJohn living there. He asked me if I could recognize Mr. DiJohn if I saw him. I did not see Mr. DiJohn in Houston again. Mr. Benford did not have a picture of DiJohn. No one ever told me that they had discovered who Mr. DiJohn was. I had testified in Houston in relation to a part of this case. I did not see the defendant Attardi in the courtroom in Galveston.

759

760 *Josephine Williams—for Government—Recalled—Recross—Redirect*

I never have been a witness prior to today. I know where the United States Courthouse is in Houston. It is in the Post Office Building. I went to the narcotic division office in that building, and I spoke to Mr. Ellis Benford there. I also spoke to a woman whose name I do not know. I told them that I knew Mr. DiJohn. Mr. Benford did not take me anywhere in an attempt to identify DiJohn.

761 There were no other person that he spoke of regarding Mr. DiJohn, except Mrs. Brewer. I know Mr. Olivera. I have just met him. I told him that Mrs. Fox and I knew the man DiJohn and had had a drink with him. I think I saw a picture of Mr. DiJohn last night but I would not be sure. I saw it at a hotel where I was with a Government man.

JOSEPHINE WILLIAMS, recalled as a witness on behalf of the Government, testified as follows:

762 *Recross Examination by Mr. Solomon:*

Since last evening I have ascertained the name of the detective who showed me the picture at the hotel. His name is Mr. Slich. He inquired whether I knew the man and I told him "No".

Redirect Examination by Mr. Martin:

I have not been subpoenaed in New York. I received a subpoena in Houston.

Rudolph Slichon—for Government—Direct—Cross
Albert J. Miller—for Government—Direct

763

RUDOLPH SLICHO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a City detective of New Orleans, Louisiana. I know the preceding witness, Mrs. Williams. I had a conversation with her. This (Ex. 99 in evidence) is the picture I showed her.

(Government's Exhibit 99 received in evidence.)

764

This (Ex. 99 in evidence) is a picture of Biaggio Angelica.

Cross Examination by Mr. Solomon:

I remember being shown a group of pictures and testifying that this picture (Ex. 48 in evidence) is the one I showed to Mrs. Williams. I showed this picture (Ex. 99 in evidence) to Mrs. Williams in a hotel last night. That was the only picture which I took with me to show her.

765

ALBERT J. MILLER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am employed by the Police Department in the City of New Orleans, Louisiana, in the department of drivers' licenses. In response to a subpoena, I have produced certain records (Ex. 100 and Ex. 101 for identification)

766

William G. Menasco—for Government—Direct
Vincent J. Farese—for Government—Direct

(Government's Exhibit 100 received in evidence.)

WILLIAM G. MENASCO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

767

I am the Comptroller of the City National Bank in Houston, Texas.

This (Ex. 102 in evidence) is an original document from the official files of my bank. The date on which the draft was purchased was April 17, 1937. This (Ex. 103 in evidence) is an original draft from the files of my bank. It was purchased on the date appearing thereon. I do not know the person who purchased the draft.

768

Stipulated by counsel that Mary Carussotto signed the name on the back of this draft (Ex. 102 in evidence) and that Josephine Attardi signed on the back of the same draft.

VINCENT J. FARESE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am a New York City detective attached to the Ninth Squad. I do not know the defendant Mary Carussotto. On June 27, 1937, I was at the offices of the Western

Samuel F. Pickering—for Government—Direct

769

Union on East 23rd Street. I recognize and identify two persons who were there at the time as the defendants Josephine DiMaggio and Mary Carnussotto. At about 5 P. M., I observed the two women leave the premises 143 E. 23rd Street. I followed them for some distance and last saw them when they crossed 2nd Avenue and went east on 23rd Street. As the two women came out the premises, I observed the younger one give something to the older one who put it in a black bag. By the younger woman I mean Mary Carnussotto.

770

SAMUEL F. PICKERING, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I have been a special agent of the Federal Bureau of Investigation for over four years. I am a graduate of the Carnegie Institute of Technology.

771

Defense counsel concede the witness's qualifications as an examiner of questioned documents.

The following Government's Exhibits were received in evidence: 104-A, 104-B, 105-A, 105-B, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, and conceded to be genuine standards of handwriting.

By Mr. Martin:

These standards (Ex. 104A to 117 in evidence inclusive) have been used by me as standards of com-

772

Samuel F. Pickering—for Government—Direct

parison to examine other Government documents.

I have examined the signature on this paper (Ex. 118 in evidence) and I find that it was written by the person whose handwriting appears on these papers (Ex. 104-A and 104-B in evidence), Josephine Di Maggio.

(Government's Exhibit 118 received in evidence.)

773

The name on this paper (Ex. 119 in evidence) is in the handwriting of the writer of these papers (Ex. 105-A to 105-B in evidence). That person is Tony Lima. The handwriting on this paper (Ex. 120 in evidence) is also that of Tony Lima.

(Government's Exhibit 119 received in evidence.)

(Government's Exhibit 120 received in evidence.)

This paper (Ex. 121-A in evidence) was written by Tony Lima.

(Government's Exhibit 121-A received in evidence.)

774

This paper (Ex. 122 in evidence) was written by Anthony Lima. This paper (Ex. 123 in evidence) was written by Anthony Lima.

(Government's Exhibits 122 and 123 received in evidence.)

I have examined this paper (Ex. 26 in evidence). The person who wrote the endorsement on that paper is Tony Lima.

The handwriting of the endorser on this paper (Ex. 126 in evidence) is Tony Lima.

Samuel F. Pickering—for Government—Preliminary Cross 775

(Government's Exhibit 126 received in evidence.)

The top signature on this paper (Ex. 125 or Ex. 82 for identification) is written by Tony Lima. The handwriting on this paper (Ex. 127 for identification) is that of Tony Lima.

This paper (Ex. 128 in evidence) was written by Tony Lima.

(Government's Exhibit 128 received in evidence.)

This paper (Ex. 130-A in evidence) was written by the person who printed these applications (Ex. 116 and 117 in evidence), Virzi.

Preliminary Cross Examination by Mr. Solomon:

I am able to ascertain whether certain printed writings which are in dispute are similar. In my study of handwriting, I have also studied printed writing. The same person who printed the name or writing on Government's Exhibit 130-A, wrote the handwriting on Government's Exhibits 116 and 117. When I examined Exhibits 116 and 117, I also examined Ex. 130-A.

I examined the written part of this paper (Ex. 130-A in evidence), with known standards of handwriting, and I am able to state with a reasonable certainty whose handwriting appears thereon independent of the written part. It is the handwriting of the person who wrote Exhibit 106, Virzi.

(Government's Exhibit 130-A received in evidence.)

778 *Samuel F. Pickering—for Government—Preliminary Cross*

I have examined the handwriting on the first endorsement on this paper (Ex. 102 in evidence). By my examination, I am able to tell whose handwriting appears thereon. It is that of Mary Carussotto. I have also compared the last endorsement which appears thereon, and it is my opinion that it was written by Josephine Attardi:

(Government's Exhibit 102 received in evidence.)

779 I have examined this exhibit (Ex. 131 in evidence). It is my opinion that the person whose handwriting appears thereon is the Virzi who wrote Exhibit 106, 116 and 117.

(Government's Exhibit 131 received in evidence.)

This paper (Ex. 132 in evidence) is in the same handwriting as appears on Government's Exhibits 106, 116 and 117.

(Government's Exhibit 132 received in evidence.)

780 This paper, (Ex. 133 in evidence) was written by the same person who wrote Exhibits 106, 116 and 117, Virzi.

(Government's Exhibit 133 in evidence received.)

This paper (Ex. 134 in evidence) was written by Anthony Virzi.

(Government's Exhibit 134 received in evidence.)

This paper (Ex. 135 in evidence) was written by Anthony Virzi.

(Government's Exhibit 135 received in evidence.)

Samuel F. Pickering—for Government—Preliminary Cross 781

This paper (Ex. 62 in evidence) was written by Anthony Virzi.

(Government's Exhibit 62 received in evidence.)

The endorsement on this paper (Ex. 136 in evidence) was written by the same person who wrote Government's Exhibit 107, Roy or Ray Cavaretta.

(Government's Exhibit 136 received in evidence.)

The first two endorsements on this paper (Ex. 137 in evidence) were written by Colagerio Iacono. 782

(Government's Exhibit 137 received in evidence.)

The first endorsement on this paper (Ex. 138 in evidence) was written by Colagerio Iacono.

(Government's Exhibit 138 received in evidence.)

The first endorsement on this paper (Ex. 139 in evidence) was written by Colagerio Iacono. 783

(Government's Exhibit 139 received in evidence.)

The endorsement on this paper (Ex. 88 in evidence) was written by Colagerio Iacono.

(Government's Exhibit 88 received in evidence.)

Conceded that the endorsement on Ex. 90 is not challenged.

(Government's Exhibit 90 received in evidence.)

The first endorsement on this paper (Ex. 140 in

784. *Samuel F. Pickering—for Government—Preliminary Cross evidence*) was written by Colagerio Iacono.

(Government's Exhibit 140 received in evidence.)

The endorsement on this paper (Ex. 86 in evidence) is that of Colagerio Iacono.

The first name on this paper (Ex. 142 in evidence) was written by Filipina Simoncini.

785

(Government's Exhibit 141 received in evidence.)

The top and bottom endorsements on this paper (Ex. 142 in evidence) were written by Filipina Simoncini.

(Government's Exhibit 142 received in evidence.)

The endorsements on this paper (Ex. 94 in evidence) were both written by Josephine Attardi.

This paper (Ex. 146 in evidence) was written by Josephine Attardi.

786

(Government's Exhibit 146 received in evidence.)

This paper (Ex. 91 in evidence) was written by Josephine Attardi. The signature on this paper (Ex. 93 in evidence) was written by Josephine Attardi.

The top endorsement on this paper (Ex. 147 in evidence) was written by Josephine Attardi.

(Government's Exhibit 147 received in evidence.)

The signature on this paper (Ex. 148 in evidence) was written by Biaggio Angelica.

(Government's Exhibit 148 received in evidence.)

Samuel F. Pickering—for Government—Cross

787

This signature on this paper (Ex. 149-A in evidence) was written by Biaggio Angelica.

(Government's Exhibit 149-A received in evidence.)

The writing on these papers (Ex. 150 A-C-D-E-F) is that of Frank Ciccoferia.

(Government's Exhibits 150-A-C-D-E-F received in evidence.)

788

The signature on this paper (Ex. 145 in evidence) was written by Josephine Attardi.

(Government's Exhibit 145 received in evidence.)

(Exhibit 152-B received in evidence as a standard of comparison as to the signature of Nicola Gentile.)

The endorsement on each of these papers (Ex. 21 and 85 in evidence) was written by Nicola Gentile.

(Government's Exhibits 21 and 85 received in evidence.)

789

Cross Examination by Mr. Solomon:

I have a record of the dates when I first made comparisons of all these handwritings, and when these exhibits were submitted to me.

The first exhibit was received by me on November

90

Samuel F. Pickering—for Government—Cross

8, 1937. I have received a great many on that day. I also received a number of exhibits several days ago. I received up to and including Q7 to 41 on November 8, 1937. The next group of exhibits, I received on December 3, 1937. I received a further lot on May 20, 1938. I received the Western Union money orders at the same times.

91

Government and counsel for defendants stipulated that if a representative of the Postal Telegraph Company were called, he would testify that he appeared personally pursuant to a subpoena and would further testify that the various documents offered in evidence purporting to be received or sent through the Postal Telegraph Company were obtained by Subpoena duly issued out of this Court.

I was in Washington when I received the photostat of Q7 to 41. They were delivered to me by Mr. Olivera. I received 42 to 106 in Washington from the same person. I received Q-113 in New York City, from Mr. Olivera.

792

It was conceded by counsel that Mr. Olivera received certain of these exhibits on October 14, 1937, and others on October 26, 1937, but that he is unable to state with reasonable certainty which of the Q exhibits were received on the respective dates.

It was further conceded that they were received by Mr. Olivera before their receipt by Mr. Pickering and that Mr. Olivera received them from Mr. Humphrey, general manager of the Western Union Telegraph Company. That they were delivered di-

Gustave A. Frederick—for Government—Direct—Cross

rectly to Mr. Olivera and not delivered to Mr. Martin.

It was further stipulated that Mr. Reehil of the Postal Telegraph Company would testify to the effect that any documents belonging to his company were delivered to the United States Attorney pursuant to a subpoena duces tecum; that a search for names was made at the request of the United States Attorney, but no other information concerning the contents of any document was given until after the service of a subpoena.

GUSTAVE A. FREDERICK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I resided at 1214 Bartlett Street, Houston, Texas. Last year, I managed that apartment house. I leased an apartment to a man named DiJohn, from February 2, 1936, to December 11, 1936. I see Mr. DiJohn in the Courtroom.

I recognize and identify him as the defendant Alphonso Attardi.

Cross Examination by Mr. Solomon:

The first time that I saw this man was on September 2, 1936. I rented the apartment to him personally. I rented a four-room apartment. Mrs. Attardi was not with him. He was living at the apartment with another

796

**Frank White Simpson—for Government—Direct
Stipulations—Motions**

woman. This (Ex. 153 for identification) is a picture of the woman with whom he was living.



FRANK WHITE SIMPSON, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

797 *Direct Examination by Mr. Martin:*

I am employed by the Colonial Paint Store in Austin. In June, 1937, I worked for a Western Union Telegraph Company at 142 East 3rd Street. I have previously seen this paper (Ex. 92 in evidence) at that office on June 26, 1937.

798 It was filled out by the manager of the office and handed to me by him, together with a message which accompanied it. I did not deliver it personally nor did I cash it. Two women called for it. I recognize and identify those two women as Mary Carussotto and Josephine Attardi. When they came into the office for the money, it was in possession of the manager who handed the same to Mary Carussotto. She in turn gave it to Josephine Attardi.



Government Exhibit 62 in evidence, translated reads:

"Jimmie Di Maggio, 3502 West 172. Half done; I hope to leave at five if there is no trouble." Signed "Georgia".

Government Exhibit 145, translated reads:

Stipulations—Motions

"B. Angelica, 321 West Bartlett, Houston, Texas: I need money to eat; I will not leave now unless you send me the money to eat. If you don't reply immediately I will write you a letter every day." There are two words here not English. Signed "Josie Attardi", and underneath is "J. Attardi".

Government Exhibit 133, translated reads:

"Mary Carussotto, 339 East 21 Street, New York City, New York, amount \$200: Am returned all well. Send the good news of yourself; a good Easter." Signed "Anthony Virzi, 4125 Polk".

(Exhibits 154 and 155 received in evidence.)

(Exhibits 2, 3, 9, 9a, 11, 12, 13, 15, 23, 24, 25, 36 A to E, 37 A to E, 38, 39, 40, 41, 42, 43, 44, 45 received in evidence.)

Objection was made to the introduction of Exhibits 23 and 24 in evidence on the ground that the information in said exhibits was obtained in violation of the Federal Communications Act, and on the ground that no proper foundation was laid for the identification of the voices heard by the witness who wrote these exhibits, and on the ground that the exhibits are not true transcripts of the conversation heard. Objection overruled, exception.

Objection was made to the introduction of Exhibit 25 in evidence on the ground that there was no proper foundation laid for the identification of the voices heard by the witness who wrote said exhibit, and on the fur-

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102 ther ground that the interception of such messages constituted a violation of the Federal Communications Act. Objection overruled, exception.

Motion was also made to strike out that portion of the telephone conversation contained in Exhibit 25 made by Di Marso to a person by the name of Jerry, who inferentially may have been the defendant Jerry Bruno. Motion denied and exception.

03 Government's Exhibit 50, a Western Union money order and telegram dated New Orleans, La., September 8th, 1936, states: "Pay to Jimmy Di Maggio, 90 Elizabeth Street \$1000 call you 1:00 a. m. signed Fredella 915 Decatur Street." This telegram was received in evidence by the Court pursuant to stipulation that Erwin J. Luchessi, employed as a Western Union operator in New Orleans, would testify that the telegram was handed in to him by the defendant Feraci. It was further stipulated that this telegram was not prepared by Feraci, but by a partner of his by the name of Carr, at Feraci's request.

04 Government's Exhibit 30 admitted into evidence relates to the testimony of Benjamin Lippe, Alcohol Tax Unit Investigator, who testified concerning telephone conversations which he wire tapped in New Orleans. The Court ruled in connection with this exhibit that the mention of the name Di Marso does not relate in any way to the defendant on trial named Di Maggio. The Court further ruled relative to this exhibit that the name Vincent mentioned in the telephone conversations had no application to any of the defendants on trial bearing the given name Vincent.

(Exhibits 34, 35A, 35B received in evidence.)

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Counsel stipulated that the exhibits called for by virtue of the subpoena (Government's Exhibits 154 and 155) were delivered by representatives of the telegram company to Mr. Olivera, agent of the Internal Revenue Department, Narcotic Division, and it is further stipulated that the exhibits were not delivered before a Judge of this court, but at the office of the United States Attorney. The United States Attorney further conceded that Mr. Olivera went to the office of the telegraph company with a subpoena, and received the exhibits and brought them back to the United States Attorney's office.

806

It was further conceded by the United States Attorney that the Government subpoenaed Salvatore Dolcemascolo who appeared in court, but was not used as a witness by the Government.

It is stipulated that the \$10 bill, Exhibit 2, is one of those listed in Exhibit 8 for identification.

Overt acts No. 3 and 6 stricken from the indictment,

The Court: At a conference held during the recess in my chambers May 24th at 3:15 p. m., for the purpose of ascertaining the character of proof which the Government would offer to show the source of the information contained in the schedule attached to the subpoena duces tecum, Exhibit 154, Mr. Martin having previously stated that efforts on his part to bring out statements made by certain defendants at the time of their arrest had been excluded by the Court, and such exclusion having been on the theory that the conspiracy had then ended and there was no substantive count alleged in the indictment, called into the room Mr. Avent and Mr. Olivera, and

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said they would explain the matters themselves. Mr. Avant stated that he was a customs representative and that as far back as August, 1937, the Customs Authorities in Texas were investigating the business of the importation of drugs, and that the Collector at Galveston had issued one or more subpoenas under Section 509 of the Tariff Act of 1930, and that as a result of that investigation Mr. Avant became aware of certain telegrams which had been sent, telegrams and money orders, from various points in Texas by certain of the defendants, and that he transmitted that information to the district supervisor of narcotics in New York. Mr. Olivera said that in April of 1937 the Narcotic Division had not only a suspicion but had knowledge that one of the defendants was a very large dealer in narcotics and that he had sent money by telegraph to another defendant in New York, and they set about to investigate the transactions between these two, one of whom was Cavaretta, and that Cavaretta before his death had made statements to Avant giving information in regard to such transmissions of money. That upon the arrest of certain defendants, among whom Mr. Olivera named Mrs. Attardi, Jimmy Di Maggio, the Cafe Dante where the telegram was addressed, Mary Carussotto, Josephine Attardi and Alphonso Attardi, and Josephine Di Maggio had made statements regarding telegrams and money orders, and that the information which had been received through Mr. Avant and the information which had been received from certain of the defendants constituted the source from which the schedule attached to

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subpoena 154 was made up. But that this information while in the hands of the Government prior thereto was not disclosed even to the telegraph company, because they feared disclosing the fact that they had it, and they first submitted to the telegraph company the names of the people and got from the telegraph company an acknowledgment that the telegraph company had such messages, and then they prepared and served a subpoena duces tecum pursuant to which the telegraph company delivered the telegrams to Mr. Olivera, and he in turn brought them to Mr. Martin's office, and then they were turned over to the Federal Bureau of Investigation and in that way came into the hands of Mr. Pickering who testified as a witness here.

Mr. Edelstein: The foregoing statement made by the Court and the stipulation and agreement of counsel is accepted by all counsel with the same force and effect as if the persons therein named were called and testified.

We further consent that the Court advise the jury that the messages involved were obtained by the Government's agent without interception. Nothing here contained is intended by counsel to waive any objection pursuant to the Federal Communications Act that the matter was obtained illegally or by interception as provided for in the Act.

(The Court and counsel returned to the court room and the jury was called in and the proceedings were resumed within the presence and hearing of the jury as follows):

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314 The Court: During the conference in chambers while the jury have had an intermission, Mr. Martin has made a statement setting forth the sources and the manner in which the Government obtained the information set forth in the schedule attached to the subpoena marked Exhibit 154 for identification, and his statement has been supplemented by statements of Mr. Avant, who has been a witness here, and who is a customs employee, and Mr. Olivera, who has also been a witness and is a Government agent in the Narcotic Bureau.

315 Counsel for the defendants accept the statement of Mr. Martin, Mr. Avant and Mr. Olivera as the equivalent of what they would have testified to if called as witnesses, and I am authorized by counsel to state that the manner in which the Government obtained the information is not to be regarded as an interception of a telegram or money order sent by one person addressed to another; but nothing in this statement shall be regarded as precluding the defendants to assert any legal rights that they may have to review the introduction of this statement in lieu of testimony, as a matter of law.

316 Now, gentlemen, does that cover it?

Mr. Edelstein: That covers the situation.

Motion made on behalf of all the defendants on trial to strike out all telegrams and telegraphic communications and money orders sent by telegraph, upon the ground, (1) that they were obtained in violation of the provisions of Section 605 of the Federal Communica-

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tions Act, and (2) that the method of obtaining these telegrams legally constituted an interception, and (3) that the subpoenas issued apparently in conformity with the statute, in fact violated the provisions of that act, as appears from the face of the subpoenas. Motion denied, exception to all defendants.

Motion made on behalf of all the defendants on trial, to dismiss the indictment on the ground that although the indictment purports to contain one conspiracy, the evidence offered proves several distinct conspiracies, and upon the ground that such proof of the several distinct conspiracies is prejudicial to the rights of the defendants. Motion denied, exception to all defendants.

Motion made on behalf of defendant Colagerio Iacono, to dismiss the indictment upon the ground that (1) the United States has failed to prove a conspiracy in which the defendant Iacono participated, (2) that no evidence was offered to show Iacono's participation in any conspiracy and (3) that all the evidence offered against the defendant Iacono is as consistent with innocence as with guilt, and therefore is insufficient basis to send his case to the jury. Motion denied, exception to defendant.

Motion made on behalf of defendant Jerry Bruno to dismiss the indictment as against said defendant on the ground that (1) the United States has failed to make out a prima facie case, (2) that the conspiracy of which defendant Bruno was a participant ended in December, 1936, (3) that he in no way participated in or was associated with any of the acts committed subsequent to December, 1936, and (4) that there was no evidence to show that said defendant participated in the conspiracy alleged in the indictment. Motion denied, ex-

820

Mary Carussotto—Defendant—Direct

ception to defendant.

The indictments were dismissed as to the defendants La Gaipa and Vallone.

821

It was stipulated between counsel that Thomas M. Webb of the Moody-Webb Company, General Agents for the American National Insurance Company, Galveston, Texas; J. F. Boddeker, Agents for the Boddeker Building, Galveston, Texas; E. W. Rhodes, General Agent of the Galveston Wharf Company; W. D. Whitmore of the Todd Galveston Drydock, Inc., Galveston, Texas; B. M. Mannon of the Eiband Department Store, Galveston, Texas; Theodore M. Webb, of the Webb Mills Company, Galveston, Texas; Frank Smith, cashier of W. L. Moody & Company, bankers, Galveston, Texas, would testify, if called, that they knew the defendant Joe Messina, whose correct name is Leo Attanasio, and that his general reputation for being a peaceable, quiet, law-abiding citizen, is good.

822

MARY CARUSSOTTO, a defendant, called as a witness in her own behalf, being duly sworn, testifies as follows:

Direct Examination by Mr. Edelstein:

I am over the age of 21, and I was born in Italy, and came to the United States in 1914, when I was 3 years old. I have lived in New York City up to the present time, and attended the public schools here until the eighth grade. I attended school until I was 15. After that I obtained a job when I was about 15½ years old as a machine operator on corsets. My first job was at the Standard Brassiere Company, where I worked for about a year. Then I was employed by

Mary Carussotto—Defendant—Direct

the Neat Form Brassiere Company, where I worked for a period of about 8 years. During that period I was home at intervals due to the illness of my mother. After that I worked for the Best Form Brassiere Company for about 2 years. When I was arrested I was employed by the Best Form Brassiere Company. I did not work steadily at the Best Form because I had to take care of my mother at times, due to her illness.

I know the defendants Mr. and Mrs. Attardi. Mrs. Attardi is my sister, and used to live at my home before she was married. My family consisted of my mother and father, my sister, brother and myself.

I know Mr. Attardi, my brother-in-law, and Mr. and Mrs. Di Maggio. My brother-in-law Mr. Attardi confirmed Mr. Di Maggio's son, and my sister confirmed Mr. Di Maggio's daughter. That means that they were sort of godparents to the Di Maggio children.

My brother-in-law left New York for the first time about August, 1936. Before he left he had been in the beer garden business some place in Brooklyn. He left New York because he had an asthmatic condition, and his doctor advised him to go to the south in order to cure it. If the climate agreed with him, he wanted to remain there and open up a business. He went there without my sister, and in December, sometime before Christmas, 1936, his wife, my sister, left New York. She returned at the end of February, and took up her residence at my home, 339 East 21st Street.

My brother-in-law, Mr. Attardi, cannot read or write either Italian or English.

My sister came here because she was sick with appendix trouble, and she was treated here by our family doctor, Dr. Munna.

826

Mary Carussotto—Defendant—Direct

I received a telegram (Ex. 133 in evidence) from my brother-in-law, a translation of which is, "Return all well send news of yourself Happy Easter". This telegram was sent by my brother-in-law, and I delivered it to my sister. I don't know Anthony Virzi, and I never heard of him. After I received the telegram, I got a check for \$200 to my order. This check (Ex. D. is evidence) is the one I received. After I received the check, I endorsed it and gave it to my sister. She used it to pay Dr. Joseph Munna for an operation.

827

(Conceded by the Government that Dr. Munna received the check in payment for professional fees.)

My brother-in-law came to New York about the end of March or the beginning of April. He remained here about five days in the early part of April. Before he left he told my sister that a friend of his, a lawyer, wanted him to go into some milk business. I saw the lawyer in my house.

828

After my brother-in-law left, I received a check for \$1200 dated April 17th, and made to my order (Ex. 102 in evidence.) I endorsed the check, and gave it to my sister. I knew the check was going to be used for the milk business. The signature on the back of the check is my sister's.

I have known Mr. and Mrs. Di Maggio since 1933. They lived at 338 East 21st Street, and I lived at 339 East 21st Street. Mr. Di Maggio works in a soda place.

After my brother-in-law sent the check, he came back about two days later. He stayed here until about May,

Mary Carussotto—Defendant—Direct

and then he went south again. My brother-in-law told Mr. Di Maggio that while he was away to look out for the business, and obtain customers among the grocery stores, as they sold milk for him.

I received a telegram saying "Place money order to Di Maggio Regards Josie Attari", and the money order said, "Pay to Mary Carussotto 339 East 21st Street \$800" (Ex. 130-A and 132 in evidence).

I received this telegram and money order from my brother-in-law. At that time my sister was not in New York. She had left about June 1st, and the telegram is dated June 26th. When my brother-in-law went back in May, my sister remained. She went back later. I understood the telegram meant that I was to cash the money order and pay the proceeds to Jimmy Di Maggio, who would give it to the lawyer with whom he was working in the milk business.

I went up to Mr. Di Maggio's house with the money order. He was out, but I spoke to his wife. I told her about the telegram, and what it was for, and I asked her to come along with me, as I did not want to carry all that money by myself. She then accompanied me to the Western Union. I endorsed the money order (Ex. 92 in evidence), and I received the money, which I then handed over to Mrs. Di Maggio.

I was arrested on October 5th, and I was in jail about 11 days. My family consists of my mother and a brother. I don't know any of the other defendants on trial except the Attardis and the Di Maggios.

I know Filipina Simoncini. I met her at South Beach about 19 years ago. We used to play together. I did not know her last name. I again met her at Columbus

Mary Carussotto—Defendant—Cross

Hospital not long ago. She came to visit my sister before she went to the hospital. At that time my sister introduced her to me. She recognized me and reminded me that we played together as children. She told me that she was married. Later on I went to see her at Columbus Hospital. That's all I know of the defendants.

Aside from the telegrams which I received, I sent some Merry Christmas and Happy Easter telegrams. I do not think I received any other telegrams or checks. I never was in Texas. I had no idea that anybody connected with these checks would be charged with a violation of law. I did not know or see my brother-in-law or Di Maggio in the narcotic business. I never was in Louisiana. Since I came to New York from Italy, I have never left New York. I have known this doctor who is our family doctor, for ten years. I had nothing to do with the proceeds of this money.

Cross Examination by Mr. Martin:

I was very young when I came to America. I believe I was three years of age. I attended the public schools here. I am not a citizen of the United States. I speak and understand Italian.

(The conceded translation of Government's Exhibit 133 is "Return all well send me news of yourself Happy Easter".)

The first word of Exhibit 133 that you show me I do not understand. I cannot read Italian. I only understand a few words, but I cannot read Italian.

Mary Carussotto—Defendant—Cross

835

(Mr. Iannucci stipulates that the first word appearing in the telegram should read "Sono" and not "Sani", which means "They are" or "They have".)

The telegram reads "They have returned" meaning my brother-in-law. I really don't understand the telegram. It was not meant for me. It was sent to my sister but they merely put my name on it. I have received no other messages or telegrams that I did not understand in the last year or 2 years.

836

I am friendly with my sister. My brother-in-law had a beer garden in Brooklyn during the last two years, and he used to have a restaurant. He also was a plasterer. I never saw any money being delivered to my sister or brother-in-law other than from a beer garden, or from his plastering work.

I don't know Mrs. Morrison. I never accompanied my sister to a place on East 6th Street. I never knew my sister and brother-in-law to receive moneys from a place on East 6th Street. I never saw a woman come to the house with money.

837

My brother-in-law, Mr. Attardi, does not read or write English or Italian. This check (Ex. 157 for identification) has a name written on the back of it which is probably my brother-in-law's handwriting. When my brother-in-law was keeping company with my sister, my brother taught him how to sign his name, so that he could obtain a marriage license. My brother-in-law finally succeeded in signing his name. I used to see him sign his name, but I never paid much attention to it. I would not be able to recognize his signature if I saw it again. I don't think I ever sent a telegram

Mary Carussotto—Defendant—Cross

to my brother-in-law in Texas. I may have sent him a Happy Easter or Merry Christmas telegram. I sent those telegrams to Galveston, Texas. I don't remember the address. I believe it was at 2002 Market Street. I don't know where he lived in Texas. He never told me that he was living at some other number in Texas instead of 2002 Market Street.

I wrote letters to him in Texas. I used to send some to Market Street and to another address, R $\frac{1}{2}$. I don't remember whether the number was 3502 R $\frac{1}{2}$ Street, Galveston, Texas, but I remember the R $\frac{1}{2}$. It may have been S $\frac{1}{2}$. I know it was a half.

I don't know a man named Cavaretta. My brother-in-law never brought men friends to dinner at my house. I am not sure because I was not home. I was working. Saturday nobody came to my home, and Sunday I used to go to the movies, sometimes during the day.

I know Jimmy Di Maggio. His Italian name is Vincenzo. I have never seen him at my house for dinner. Sometime he would come in with his wife, and we would give him a cup of black coffee. My brother-in-law was present when he was in New York. Sometimes the lawyer Sal Dolcemascolo was also there with Jimmy Di Maggio and brother-in-law.

I remember being in your office on October 13th, 1937. I had an attorney with me named Hannibal Milano. My brother, Dominick, was present at the time. I had no conversation with my brother or my sister about Cavaretta being at my house. I don't remember my brother making any such statement that Cavaretta was at my home. I recall that my brother-in-law has a bar of his own in Brooklyn at the same time he was working

Mary Carussotto—Defendant—Redirect

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as a plasterer for contractors. Since he left New York I don't know what business he had in Texas. I know he went there to obtain a business, open a saloon or something like that, but I really didn't know what he was doing. I don't know whether he was working at all since he left New York. He did not owe me any money. I don't know whether he owed money to Jimmy Di Maggio. I never asked him. I spoke to my sister about the \$800. He sent it to me instead of directly to Di Maggio because Di Maggio cannot read or write English or Italian. I guess somebody in his family can read or write.

842

I am employed at present. I have been unemployed within the last two years off and on because sometimes business was slow, and sometimes my mother was sick. During the time I was not working, the only support was my brother, who used to work for the W. P. A.

Redirect Examination by Mr. Edelstein:

There are four rooms in the apartment where I live. Three people live there.

843

When I got checks, I knew what they were for. They were for the milk. At the time of my arrest, I was questioned, and I was questioned after my arrest. I was questioned so many times I don't remember how many. Before I was questioned in the presence of the lawyer, I was questioned about five times.

Our flat is a railroad flat. It has windows in the front and in the back. The rent is \$22.

I never sent any telegrams except about a birthday or Easter.

3 844

*Mary Carussotto—Defendant—Recross—Redirect**Recross Examination by Mr. Martin:*

On the night of my arrest, Mr. Olivera came in my home about 2:00 o'clock in the morning. They took me to an office in some building. I saw Mr. Artis there. I spoke to both these agents. I don't remember what I said at the time, because when I was arrested, there was a policeman with a flashlight and a gun, and it was 2:00 o'clock in the morning. When I spoke to the two agents in the office, I don't remember what I said because I was very excited. I had left my mother home sick, and I was thinking about her. I remember talking, but I don't remember what I said, or where I was, or what I did. They told me they were detectives, but I don't know what I was arrested for, as I did not commit a crime.

Redirect Examination by Mr. Edelstein:

Five detectives and a policeman came into the house. I heard them say, "Where is Mary?" My mother woke up and called my name, and then the policeman came over to me with a flashlight and a gun. I was excited. I was still excited up in the office. I did not know what I was talking about. I was never arrested before in my life.

My brother-in-law sold the beer garden over in Brooklyn in July, 1936. It was about the time he went away with asthma.

Louis Liguori—for Defendants—Direct

847 B.1

LOUIS LIGUORI, called as a witness on behalf of the defendants, being first duly sworn, testifies as follows:

Direct Examination by Mr. Zelenko:

I am 30 years old, and I was born in this country. I was a taxicab driver last. I stopped working on December 7th, 1937, the day I was put under arrest. I am unemployed now. My license was suspended because I was arrested. I can't work until the case is disposed of.

I know Louis Colonna who testified in this trial. I know him for about 24 years. I have visited him at his home on many occasions. I visited him in 1937 a few times. Sometimes there were people present, other times there were not. I just went up to visit him at his home. I know the witness Walter Boysa for about 2 or 3 years. I met him while driving a taxicab. He was also a taxicab driver. I don't know Louis Ruppolo. The first time I saw him was when he came up to the place where I hacked with two agents, and pointed me out and said "This is the man", or something of that sort. That was when I was arrested.

I was on Amsterdam Avenue between 72nd and 73rd Streets, Sherman Square. I was sitting in my taxicab on the hack line. Two men went into my cab and seated themselves. I said, "Where to?". They said, "We don't want to go anywhere," and asked for my hack picture. I had just come from a restaurant, I had my hack picture in my pocket. They looked at it, and asked for my chauffeur's license. They looked at that, and then this fellow Louis Ruppolo came over to the cab, and one of the agents said, "Is that the fellow?" and he said, "Yes. That's the fellow". When he came over to the cab,

:850

Louis Liguori—for Defendants—Direct

Louis Ruppolo said, "Hello, Louis," and I said, "Who are you? How do you know my name? I don't know you." He said, "Oh, you know me. They call me Louis the Bum." I said, "I am awful sorry. I have never met you before." Then the agents asked him, "Is that the fellow?" and he said, "Yes. That's the fellow." Then I was arrested.

:851

I know Charlie Morgan for about 14 years. I saw him every once in a while. He also was a taxi driver at one time. I saw him last year. I never saw him in Colonna's house. I saw him last about the early part of last year. I never went with him to the "Normandie" to take off narcotics. I never went with anybody to any liner to take off narcotics. I never sold narcotics of any kind. I never made \$100 with anybody to take narcotics from a boat. I did not act as a lookout for Charlie Morgan on April 16th. I heard Colonna say that, but I never acted as a lookout. Outside of the names you have mentioned, I know none of the other defendants in this case. I did not know any of the other defendants who were sitting with me before this trial began. I was not present in Colonna's house when Ignaro had a hammer over Morgan's head. It sounds funny to me, because if I was there, I don't think I would stand for anyone holding a hammer over Charlie Morgan's head, as he is a friend of mine. I never hijacked any narcotics.

7: 852

I know nothing about this case other than what I have heard up here. I never entered into any agreement with anybody to buy or sell narcotics. I didn't know when I visited Louis Colonna's house last year, that he was in such an illegal agreement. I never went to Pier 88 to the liner Normandie on April 16th, with Charlie Morgan

to get any package, as has been testified by Louis Colonna.

Cross Examination by Mr. Martin:

My right name is Louis Liguori. I never used any other name. I did use the name of John Russo at one time when I was arrested in 1933 or 1934 in New York. I have never been convicted for a crime. I have been in Philadelphia. I was there on April 15th, 1931. I was never convicted in Philadelphia as a pickpocket or for stealing. I did not receive a suspended sentence on April 16th, 1931, from Judge Hamburger in Philadelphia.

854

I believe I was in Philadelphia in April, 1931. I was in court or being detained on that date. I have never been convicted of a crime.

I know Mrs. Colonna. I knew her in 1937. She was at home during the time I visited Louis Colonna. Sometimes there were people there, and other times there were not. I do not know John Vencileoni, or Johnny the Frenchman, Little Johnny. I do not know Gennaro Caputo or Francois Caputo. I do not understand French.

855

I never operated my taxicab from the neighborhood of 55th Street and 8th Avenue at any time. I never visited that vicinity in 1936 or 1937. I do not know whether there is a saloon on 53rd Street and 8th Avenue.

I do not know a defendant in this case, Luicen Ignaro or a defendant Felix Papa. I did not know Morgan under any other name. I do not know what his business was in 1936 or 1937. I do not know whether he ever worked as a longshoreman. I never knew him under the name of Kennedy. I know his wife, Mrs. Morgan.

The French Lines dock at about 48th or 49th Street in

856

Louis Liguori—for Defendants—Cross

New York City. I believe I have taken passengers there when I was operating a taxicab. I never drove Louis Colonna there, and I never drove Ignaro there.

857

I do not know John Vencileoni or Johnny the Frenchman. Louis Colonna never came to me when I was operating a cab at 72nd Street and Broadway, and asked me to find Charlie Morgan. I never drove Colonna any place in my taxicab that I recall. One time I received money from Louis Colonna. He owed me a few dollars and he paid it back. That happened at 58th Street and 11th Avenue, a couple of years ago. No one else was present. I never saw Louis Colonna pay Charlie Morgan any money in my presence. I never accompanied Louis Ruppolo to a saloon uptown. I don't know a man named Willie Brown. I know a man named Harry Brown who is a superintendent in the building where I reside. I didn't hear Louis Ruppolo testify that he accompanied me uptown to see a man named Willie Brown.

858

I do not know Cola Gentile. I have never been to 90 Elizabeth Street. This paper (Ex. 59 for Identification) with the name Joe Russo written on the back of it is not in my handwriting (Government Exhibit 59 for Identification). The same is true of this other paper (Ex. 83 for Identification). The same is true of this third paper (Ex. 160 for Identification). I have no objection to writing the name Joe Russo for counsel. (Witness writes the name Joe Russo three times, Government Exhibit 161 in evidence).

I do not recognize the person on this picture (Ex. 162 for Identification).

(It is conceded between the attorneys on both sides that a witness from the French Line would testify that the liner Normandie sailed from Havre on April 7th, 1937,

arrived in New York on April 12th; sailed from New York on April 14th, at 11:10 a. m. arrived in Havre on April 19th, 1937; sailed from Havre April 21st, 1937, arrived in New York April 26th, 1937; sailed from New York April 27th, at 11:10 a. m., arrived in Havre May 3, 1937.)

(It is stipulated by and between the attorneys for the respective parties hereto that if the Warden of Tombs Prison were called, he would testify that Ralph Liguorio was arrested April 4th, 1936, and that he has remained in custody since that date. It is further stipulated that said arrest and custody of Ralph Liguorio is not connected with this case in any manner.)

860

(It is stipulated and conceded by the Government that the defendant Jerry Bruno was taken into custody on December 21st, 1937, at his home, 807 Riverside Drive, located at 156th Street, New York City.)

(It is stipulated by counsel for the United States that if Francois Giacomma were called as a witness, he would testify that he is secretary and treasurer of the Southern Wine Manufacturing Company, Inc., of 1225 Chartres Street, New Orleans, Louisiana, and that his company has employed the defendant Jerry Faraci as a salesman since August, 1936 continuously to the present date, and that his salary is \$25 per week, and that he is a steady worker.)

861

DR. JOSEPH MUNNA, being called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Edelstein:

I am a graduate of the University of Palermo, Italy,

Dr. Joseph Munna—for Defendants—Direct

in 1904, and I passed the Board Examination in New York in 1909. Since then I have been engaged in the practice of medicine in the City of New York.

I know the defendant on trial, Mr. Attardi. I know Mrs. Attardi, who has arisen in the courtroom, for at least 7 or 8 years. I operated on her mother, and sometime later on her father. It must be about 9 or 10 years, because I knew them before.

Sometime before March 26, 1937, I saw Mrs. Attardi professionally. I do not know how long before. I do remember that around that time I operated upon Mrs. Attardi for some abdominal ailment, and I received this check (Ex. D in evidence) in payment for the operation and the hospital expenses. This check was delivered to me. I do not remember who delivered it. The second signature on the check is mine. I then deposited it in my bank in the regular manner. Before I was subpoenaed to come here to Court today, somebody came to see me in reference to the check. I don't know if I would be able to recognize the man whom I saw.

(It is conceded by counsel for the Government that Mr. Olivera, the Government agent, visited Dr. Munna's office and questioned him with reference to this check.)

(The witness steps down and identifies Agent Olivera as the man who came to see him, but he is not sure.)

Mr. Olivera told me that he was an agent of the Internal Revenue, and he was making an inquiry about this business. He wanted to know whether the money was paid for an operation or not, and I told him that it was for an operation. I showed him everything he wanted to see. I gave him the name of the hospital, and he had a permit to use any hospital record and anything he

Dr. Joseph Munna—for Defendants—Cross

865

wanted to. I don't remember whether he had the check with him. I think I told him about it.

Cross Examination by Mr. Martin:

I have received monies from time to time from Mrs. Attardi. I told that to the gentlemen who came in to see me. There was some money given to me by check relating to another person on whom I operated. I don't remember the name of the other patient. I might recognize the other person if I saw her.

866

(It is conceded that the name of the other person is Filipina Simoncini.)

The payment was made in one check of \$150, as far as I remember.

This picture (Ex. 163 in evidence) looks like the second woman upon whom I operated on.

(It is conceded that the picture shown Dr. Munna is a picture of Filipina Simoncini.)

867

I do not know the name of this person. I think her maiden name was De Primo, because I knew her father. This paper (Ex. 164 for identification) has my name endorsed thereon. This is the second check I received for the second operation on Mrs. Simoncini. I don't remember who gave me the check. I did not receive any other checks from Mrs. Attardi. I cannot remember who gave me the check, but it was someone from the family of Carusotta. I don't remember which one gave it to me.

This check (Ex. 165 in evidence) is one that I received and paid to the hospital for hospital expenses.

868

Dr. Joseph Munna—for Defendants—Redirect

869

I don't remember for whose expenses. The fee in each case is supposed to be \$200. I received the first check of \$200 with the understanding that it was for hospital expenses and operation. The expenses must have been around \$75 in the first case. In the second case I received \$150 on account, and I paid the hospital expenses. Altogether I received \$350. The check that I gave to the hospital for expenses was part of the \$200. I don't remember whether they paid me the \$150. I paid the hospital by check. In one case I paid \$75 and in the other case I think a little more, but checks are checks, and they speak for themselves.

(Exhibit 165 received into evidence; Exhibit 166 received in evidence.)

Out of this check (Ex. 164 for identification) I paid this check (Ex. 166 in evidence).

Mrs. Carusotto is a patient of mine. I operated on her. This (Ex. D in evidence) is the only check I received from Mrs. Attardi for professional fees.

870

Redirect Examination by Mr. Edelstein:

I cannot say when I saw the gentleman or Mr. Olivera. I delivered my checks to him, which I had made out to the hospital. At that time I talked to him about the other operations. I don't remember whether at the time Mrs. Attardi came to see me in connection with her ailment upon which I subsequently operated, she had come from Texas. I don't remember whether I had operated on her before that time.

Arnold Batiste—for Defendants—Direct

ARNOLD BATISTE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Zelenko:

I am employed by the French Line, and came here pursuant to a subpoena to produce certain records. I am a clerk in the accounting department of the French Line. I have with me a payroll record of the French Line, Pier 88, showing the names of employees who worked on that pier during the week of April 8th to April 14th, 1937. That payroll record was compiled in the regular course of business, and has on it the name of every person employed as a longshoreman on that pier during that week. It also contains the social security numbers of each employee which we are required by law to have.

(It is conceded that this payroll record, Ex. BB for identification contains no such name as Charles Morgan.)

I have also with me the payroll record for Pier 88 for the week April 22nd to April 28th, 1937. That payroll record contains the name of every longshoreman and his social security number who was employed by the French Line on the Normandie, and the pay he received.

(It is conceded that the name of Charles Morgan does not appear on that payroll, Ex. CC for identification.)

(It is also conceded that the name of Charles Morgan does not appear in a book called "Time-keepers Office", Ex. DD for identification, showing the names of employees and longshoremen,

1874

Arnold Batiste—for Defendants—Cross
Salvatore M. Dolcemasclo—for Defendants—Direct

which contains a record of every longshoreman employed by the company for the last two or three years.)

Cross Examination by Mr. Martin:

I am familiar with the practice of longshoremen in unloading boats.

1875

SALVATORE M. DOLCEMASCOLO, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Edelstein:

I am an attorney and counsellor at law admitted in 1930. I live at 352 East 13th Street. My office is at 401 Broadway, New York City. I have resided in the City of New York for about 33 years.

1876

I know the defendant Attardi, whom I met about four years ago in a pastry shop. I met him thereafter causally various times. About two years ago I met him again. I had taken over a judgment against one John Greco and Costello. I purchased the judgment and permitted the people to remain in business. This was a pastry shop located at 351 East 13th Street, opposite where I reside. Afterward those people sold that place with my consent to another individual. The new purchasers thereafter asked permission to take out the fixtures, and I consented with the understanding that I would get my money. Thereafter we had

Salvatore M. Dolcemasclo—for Defendants—Direct

877

some talk, and Mr. Attardi interceded and used his good offices to have an amicable settlement. I met him again in the latter part of March, 1937.

I haven't the records of the Rosal Milk Company. They are in the possession of Mr. Olivera (papers produced by Mr. Olivera for the United States Government).

I turned over all the papers of the company to Mr. Olivera. I did not get a receipt for them. I knew who Mr. Olivera was. I had a talk with him at my office. To the best of my recollection, all the papers here (Ex. G to AA for identification) are the ones I turned over.

878

I met Mr. Attardi again in 1937. I don't know whether it was after he returned from Texas. This was in the latter part of March. I knew Mr. Attardi lived approximately ten blocks away from me, but I did not know exactly where.

Mr. Attardi had found out that I had started a milk company. I started the company March 18th or 19th of last year. Originally I advanced money to organize two men, Tony Zarcone and Emanuel Sanperi. They were to solicit customers in order to sell bottled milk. The bottled milk was to be sold wholesale to stores, and retail to people in buildings.

879

I was very eager to get them off the street and get them started in the business. They painted a very flourishing possibility. Sanperi had been in the business twenty-five years, and Zarcone had been in the business ten or fifteen years. Previously a law had been passed prohibiting the sale of loose milk in cans. I don't know whether that made a bigger market for bottled milk. I knew nothing about the business. I

880 *Salvatore M. Dolcemascolo—for Defendants—Direct*

invested between \$500 and \$600 and endorsed a note for a truck. They invested nothing. They had no milk routes before.

881 We formed a partnership and filed a certificate for a trade name in the County Clerk's office for Rosal Distributing Company. Rosal stood for a combination of my wife's name Rose and my name Sal. I filed a certificate and also made an agreement. This paper you now show me is the first certificate of doing business. Subsequently we filed another one with Josephine Attardi. This paper (Ex. K in evidence) is a copy of the original agreement which was left with the bank. The agreement was made about the middle of April, 1937.

882 Before we organized, I spoke to, Mr. Attardi. He heard I was short in money because there was a milk war and we were selling milk at less than cost. Mr. Attardi wanted to loan me some money. I told him since he was interested I would give him a share of the business. He was to receive the same share that I and the other man would have. He and his wife entered the business with that understanding. He gave me \$100 or \$150 to start, and then he gave me another \$100 and subsequently he sent various sums of money over. This copy of the agreement (Ex. K in evidence) is an original duplicate having the same signatures as the original. This paper was prepared by me and signed by the parties to the agreement in my presence. The name of the bank is left blank in the agreement. We subsequently opened a bank account. We left it blank at first, because we did not have enough money to start a bank account. When we did have enough money to open an account I put in the name of the

Salvatore M. Dolcemascolo—for Defendants—Direct 88

bank, which was the Bank of Naples. I believe I put in the name of the bank in the original agreement.

I filed the trade name certificate a day or two after the preparation of the agreement. This paper (Ex. X in evidence) is a copy of the first trade name certificate filed.

I don't know the date of filing of the first certificate for doing business. It was subsequently abandoned and a similar one with the addition of Josephine Attardi was filed. The original certificate was signed by the persons whose names are typed in this copy (Ex. X in evidence). The original also had the notary's name subscribed thereto. About two weeks after I filed the original certificate, I filed the amended one. The amended certificate added the name of Josephine Attardi. The other people named in the first certificate also signed the second one. 884

We proceeded to do business. Mr. Attardi went away. Before he left, he said he would send me money if I needed it, and he left me Vincenzo Di Maggio to help me in getting retail trade. They were well known on 21st Street, and most of the people there had come from the same province and town as the Di Maggios. Mr. Di Maggio represented Mr. Attardi. Mr. Di Maggio canvassed the section, but I do not know exactly when he did so. The first amount of money I received by check from Mr. Attardi I believe was \$1200. This check book (Ex. J in evidence) was given to me by the Bank of Naples, and it had stubs on the side where I made notations. This check (Ex. 102 in evidence) for \$1200 was received by me. It was given to me by Josephine Attardi. We went over to the Bank together and opened a bank account with it. The endorsement 885

886 *Salvatore M. Dolcemascio—for Defendants—Direct*

of the milk company is my endorsement. The check book was kept in the regular course of business, and shows the deposit of \$1200 on the first page thereof under date of April 23rd. I don't remember when I received another check from Mr. Attardi.

887 I received \$800 from Mr. Di Maggio. Mr. Di Maggio told me that it came from Mr. Attardi. I don't know the date when I received it. This paper (Ex. 92 in evidence) refreshes my recollection. I remember it was towards the latter part of June. I remember receiving another check, but I don't remember the amount of it. I deposited that check in the bank. The check stubs would refresh my recollection.

888 I used the \$800 which Mr. Di Maggio gave me to pay for obligations of the milk business contracted during Mr. Attardi's absence. I do not see a notation for a deposit of \$1300 in the check book (Ex. J in evidence). I did not receive this check (Ex. EE in evidence), but I told Mary Carusotto to go and deposit it and I gave her the bank book of Rosal Distributing Company. I understood it (Def. Ex. EE in evidence) was endorsed by Mary Carusotto. I did not see her endorse it. When I told her to go to the bank with it, her sister Josephine Attardi was there. I don't know whether Josephine signed Mary's name. I told them to deposit the check in the bank, and it was deposited.

I don't see the entry of the amount in the book (Ex. J in evidence) although there is a sudden jump in the amount on hand.

Mrs. Attardi was in New York during most of the period I received these checks. Mr. Attardi was not in New York. I don't remember whether I received any more checks. When I received these checks I was still

Salvatore M. Dolcemasclo—for Defendants—Direct

889 B.

carrying on the milk business. Mr. Di Maggio was helping me obtain customers.

We continued in the milk business until we reached a sale of about 80 to 90 cases on an average. I was then told to stop taking customers from little companies. I told them I couldn't, and they said that on July 1st, when the price war stopped, I would be unable to obtain any more milk.

I changed from the Ace Company to the Imperial Company because Ace wanted six cents a bottle, and Imperial took five and one-half cents and gave me ten days' credit. We carried on the business under the name of Rosal Milk Company. When they refused to give us milk, I tried to sell the route. I disposed of the retail route to one man, and the wholesale route I tried to sell to a firm over on 86th Street for \$1500. They took over the route and I went away for the weekend. When I returned after July 4th they had given up the route because most of the milk distributors had claims on certain of our stops and they did not want to buy a fight. Mr. Attardi was not there at the time.

890 B.

My recollection is that Mr. Di Maggio was away. I know he went to see different people, and that he stopped in Texas. I don't know who accompanied him.

891 B.

I did not keep regular books of account. All we kept was a route book.

The business fell to pieces.

When Mr. Olivera called, I showed him all the papers I had, and I talked to him on one or two occasions in my office for about an hour at a time. Another time I found some more receipts at home, and I called him and told him I had those receipts, and I went over

892 *Salvatore M. Dolcemascolo—for Defendants—Direct*

to the office of the Narcotic Division, and I was there for about two hours. I have since seen him various times. We did not talk about the subject lately. Nobody in the District Attorney's office questioned me. I spoke to Mr. Martin. He questioned me about this matter. I was there about twenty minutes and there was a stenographer there. Nobody else questioned me in the District Attorney's office. When Mr. Martin questioned me, I did not have these exhibits before me. During the time Mr. Martin questioned me, no reference was made to the checks about which I have testified. I don't remember what I said to Mr. Martin except that I gave a resume of the entire transaction from the very beginning to the end. I cannot remember what I said to Mr. Martin and what Mr. Martin said to me. I gave him the history of the milk business.

After I made the statement to Mr. Martin, I was told that I would be called if needed again. I was not called by the government until last week in the latter part. I went into the witness room in the back. I was in the witness room twice. I came here the second time this week. Then Mr. Martin advised me that he did not expect to call me.

(Statement of Salvatore M. Dolcemascolo made to District Attorney Martin offered in evidence, Defendants' Exhibit FF, and read to jury.) Conceded that Dolcemascolo was not the attorney for the Di Maggios, Carusottos and Attardis at the time of the interview.

At the time I was questioned as shown in this paper (Ex. FF in evidence) I did not have any of the checks and records before me. I received some checks in ad-

dition to those to which I testified, as for example, the check in the amount of \$1300. When I made the statement I was testifying from memory. I testified yesterday that the two women came to see me with the check of \$1300. I gave them the bank book, and they went to the bank and deposited it. I did not endorse the check. The bank clerk did it for them. This check, (Exhibit EE in evidence) was in addition to the amount I told Mr. Martin. I don't know how much Mr. Attardi put into the business altogether.

Mr. Attardi put in more than \$1000. When I said that he put in \$1000 or \$1400, that was a mistake. I meant that subtracting monies withdrawn from Mr. Attardi's total investment, there remained about \$1000. He deposited more than \$1000 in the business. This check (Ex. 102 in evidence) for \$1200 contains the endorsement of Mrs. Attardi, and the endorsement made by me of the Rosal Distributing Company, which check was deposited in the account of the company. The total sum of money received was \$3425. Mr. Attardi also gave me about \$300 which would make it about \$3750. I don't know how much was drawn out. The \$300 I mentioned was not deposited in the account. I remember the time I received \$200, and Mary Carussoto asked me to give her \$75. It was about a week or ten days after Mr. Attardi left. She told me that her brother-in-law had sent the money. She and Mrs. Attardi came over to see me at Dante's Cafe near my home. They came over to see me some time after they gave me the \$200.

All I can recollect is that shortly after Mr. Attardi left, I was short of funds and so was Mrs. Attardi. I sent him many telegrams on my behalf and on her behalf explaining the situation. I had negotiated a loan, and it was just tiding me over. Then Mrs. Attardi

898 *Salvatore M. Dolcemascio—for Defendants—Direct*

left, and Mr. Di Maggio came to me one night towards the latter part of June, and gave me \$800.

As far as the \$200 is concerned about a week or ten days after Mr. Attardi left, the two women came over to see me. Mrs. Attardi claimed she was destitute, and I gave her \$75. I handed the money to Miss Carusotto, but it was for Mrs. Attardi. I told Mr. Martin that I could not operate because the Ace Company had not paid its garage bill, and the garage refused to let my truck go out. I also told him I had papers and bills to show that I had stored the car there at one time. I presume I turned over those papers to Mr. Olivera. These papers (Ex. P in evidence) are the bills I received from the Union Square Garage for the Ace Milk Company.

When I changed from the Ace Milk Company to the Imperial Milk Company, I continued to use the same truck. I stored the truck in the same garage until the truck was resold after we closed down. That was in the latter part of August or in the middle of September.

When I operated under the Imperial and Ace Milk Company, we did not have our own printed bills. We used bills of the other companies including some pads from the Flushing Dairy. These bills (Ex. S in evidence) are bills from the Imperial to me for milk. The Ace Milk Company also billed us from time to time. These (Ex. H in evidence) are the bills.

When we bought milk from these concerns, we used their name and sold it under their name.

Some of the checks of Rosal Distributing Company bounced, causing a lot of trouble, I showed Mr. Olivera

Salvatore M. Dolcemasclo—for Defendants—Cross

901

all of those checks. These checks (Exhibits G1, G2, G3 in evidence) are some of those which bounced back. This check (Ex. H-1 in evidence) is a check for \$75, which bounced. These (Ex. GG in evidence) are notices from the bank relative to the returned checks.

I received these papers (Ex. L in evidence) from the Ace Milk Company. That is the Abraham Cohen about whom I testified. After I received this letter I began to deal with the other company. When these checks came back, I did not enter them in the stubs. I borrowed money and made arrangements to have them picked up by Tom.

902

We had no books of any kind except a route book which we balance at the end of the week.

Aside from the fact that Jimmy Di Maggio helped out, he had no financial interest in the milk business or in any of the monies that I received from Attardi. Miss Carusotto had no interest in the business. She wanted to have her sister stay in New York. The money I received as far as I know was the property of Mr. and Mrs. Attardi only.

903

I was interrogated in Mr. Martin's office by a Mr. Johnson and Mr. Olivera. I only spoke to Mr. Olivera after the time I delivered the books and papers to him, and at another time when I brought some receipts to him from home.

Cross Examination by Mr. Martin:

I have resided on the east side below 14th Street most of my life. I have never seen any cow there. I have

904 *Salvatore M. Dolcemascolo—for Defendants—Cross*

no experience in dairying. The Rosal Milk Company never had any cows or horses and wagons. Its office was located in my office. That was the only office it had. The name of the company was not on my office door. The name of the company was not in the telephone book. It was arranged with the bank to send statements addressed to my care.

905

Alphonse Attardi was not a member of the Ace Milk Company, nor of the Imperial Milk Company. Neither was Di Maggio. Alphonse Attardi secured customers for the Rosal Milk Company, and arranged for delivery of milk to certain people. The only person who ever received payment for milk was Tommy Sanperi. Alphonse Attardi never received any money for any milk that was sold. I don't know how many cans of milk amounted to \$800, as we never dealt in cans. I would not say that I delivered \$800 worth of milk to Alphonse Attardi before he left for Texas. All the milk of the Rosal Milk Company was sold in New York. We never had a route in Texas. The company never sold any milk in Texas.

906

I was the legal representative of the Rosal Milk Company at all times. I had custody of all their records, and I am familiar with their transactions.

I was told Alphonse Attardi sent \$800 to me. That \$800 did not represent the proceeds of milk sold by him either here or in Texas. The \$800 he sent was not the proceeds of the Rosal Milk Company.

The Rosal Milk Company had a bank account. Mrs. Attardi was the only one who had power of attorney to make out checks. I always took care of making out checks. There was no understanding that I was to make out the checks, and that she was to sign them.

Salvatore M. Dolcemascolo—for Defendants—Cross

There were no checks drawn by the Rosal Milk Company which were not prepared by me. I received the \$800 in cash, and did not deposit it in the bank account. I delivered the \$800 towards payment of some past debts of the company. I had no receipt except the checks which I picked up.

At another time I received \$125 out of \$200 which I had been told Alphonse Attardi had sent. I did not see the check by which the \$200 was transferred. I don't believe I deposited the \$125 in the bank account.

I have been admitted to practice since January 13th, 1930, and I have been actively engaged in practice. I don't remember the dates when I received the \$125 and the \$800. I received the \$125 (witness examines Ex. D in evidence), about March 26th, 1937. I received the \$800, (witness examines Ex. 92 in evidence) about June 26th, 1937.

At that time the Rosal Company was insolvent in this respect that if it were necessary to liquidate, there would not be any money to do so. The liabilities exceed the assets. As the attorney for that company, I regarded the funds as being held in trust for its creditors. Out of the \$125 which I received, the money was applied to the company, and some of it went to Mr. Dubinsky. No part of the \$125 was used for medical expenses. One of the endorsements on this paper (Ex. D in evidence) is the name of Munna. I have heard the name mentioned but I do not know who the man is. Some of the moneys on deposit in the account of the Rosal Milk Company were used for personal expenditures. They were not used for my personal expenses but for the expenses of others. At the time the checks were drawn I was not aware of their purpose. I never

Salvatore M. Dolcemascolo—for Defendants—Cross

made any inquiries as to the reason for the withdrawal of money for personal expenditures. Rosal Company engaged in no other business but that of milk. I know the defendant, Jimmie Di Maggio. I am quite friendly with him. I had a conversation with him about the time that I received the \$800. I do not recall that I had received any word from Mr. Attardi that I was going to receive some money. I received the \$800 from Di Maggio. He told me that that is what Attardi had sent me. I understand Italian. I am able to understand some of the words appearing on this paper (Ex. 97 for identification). I had other conversations with Di Maggio about the time I received the \$800. We spoke of the milk business. The Ace Co. and the Imperial Co. were only our means of putting our product on the market. We were selling the products of the Ace Co. at first and later that of the Imperial Co. The routes by which the milk was distributed were ours, established by us.

I cannot commit myself to a definite conversation as to the \$800. When Di Maggio was arrested, he told me that he had been arrested or giving me the \$800. I laughed at it and told him I would take it up with the District Attorney. I was never subpoenaed. I always was reached by telephone. I testified this morning that I communicated with Mr. Attardi many times while he was in Texas. Some of these communications were in the form of letters. I cannot recall to what address I wrote him but I will be able to determine this after refreshing my recollection from my files. I believe that Attardi had more than one address in Texas. I do not think I ever addressed him at 2002-Market Street, Texas. I have heard that address. My recollection is that he is always in Houston. I was continually re-

Salvatore M. Dolcemascolo—for Defendants—Cross

913

questing the Attardis to send me money for the milk business. They claimed that they had no money. Attardi had gone to Texas and taken money with him. He promised me that as soon as he got started he would send me money if I needed it. This need was so great that I arranged a loan with the National City Bank. As I needed money from time to time, I spoke to Mrs. Attardi. I would go to her house, draw a check for the driver which check he would sign. In June, 1937, I sent Attardi at least five telegrams requesting money. My recollection is that I sent them all to one address. During the time Mr. Attardi was in Texas, I spoke with Mrs. Attardi concerning obtaining funds for the milk business. She told me that she was impoverished and that she needed money to go back to Texas.

914

I have examined this paper (Ex. 91 in evidence). It is a check for \$1,017, to the order of Mrs. Attardi from her husband in Texas. I do not believe that this money went to the milk business. I do not believe I ever saw this paper before.

For all practical purposes, I was the financial secretary of the Rosal Milk Company. I do not know whether the check (Ex. 91 in evidence) ever went into the business. I never received it. I never had a conversation with Mrs. Attardi about receipt of \$1000. from her husband. I never saw this (Ex. 93 in evidence). I can't tell whether it went into the business, but I am sure it didn't. Neither did the sum of \$650, represented by this check (Ex. 94 in evidence). I never had any conversation with Mrs. Attardi about the money which she received from her husband and which money did not go into the milk business. I know that Mr. Attardi was going to Texas to engage himself in a beer garden

915

916 *Salvatore M. Dolcemascolo—for Defendants—Cross*

business. However, I do not know what he actually did there. He had complained about being ill, stating that he had been gassed during the War and that he contemplated a change of climate and then I heard that he was in Texas. I do not know whether he engaged in business there or not. I know that he had sold his beer garden in Brooklyn and I believe he received over \$3000. for the place. That is all I know. I have known Attardi for over four years. I became very well acquainted with him during the last two years. I did not know the source of his income. However, on one occasion he asked me to meet him in Brooklyn in regard to a contract which he wished to sign. I do not know whether he was receiving charity during this period. I believe the Rosal Distributing Company was meeting its obligations up to May 8, 1937. I never made a profit with this Company. I lost all the money that I possessed. I never paid any dividends or any salaries. Checks drawn after May 8 were all post dated. They were issued a day or two before they were dated. These (Ex. 167 in evidence) are a number of sales and collection slips which represented the business between the driver and myself. They represent the sales and collection made by the Rosal Distribution Co. The driver would obtain receipts from the customers, then turn them over to me. Some of the receipts were headed Rugby Farms. The driver must have obtained the slips from some one else as we had no stationery of our own.

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(Government's Exhibit 167 received in evidence.)

These slips (Ex. 167 in evidence) are on the stationery of Rugby Farms and Sunnyside Farms. However, none of the companies enter into the transactions made by

Salvatore M. Dolcemascolo—for Defendants—Redirect

9193

the Rosal Distributing Co. The driver merely used their stationery for our purposes. I am the person designated as "Sol" on this paper. (Part of Ex. 167 in evidence). Neither Rosal nor Flushing Dairy had anything to do with the transaction on this paper (Ex. 168 in evidence).

(Government's Exhibit 168 received in evidence.)

Sales slips which are headed by the name of the Imperial Milk Company represent sales of milk from that company. I have lived at 352 E. 13th Street, Manhattan, for about twelve years. I know of a man named Tony Lima. I do not know where he lived. I had a talk with Mr. Olivera about Tony Lima. I never heard of Mrs. Bodnovich lived on 13th Street. I never brought any money which I received from Attardi to 90 Elizabeth Street nor did I ever give any of it to Tony Lima.

9204

Redirect Examination by Mr. Edelstein:

There are eight families residing in my house. I know each and every one of them. It is a tenement house.

9215

These (Ex. 176 and 168 in evidence) are the daily reports from my driver of the sales of milk. They are in the handwriting of Tom Samperi who was then route man. I do not know where he obtained the letterheads which he used to make these returns.

This paper (Ex. C-1 in evidence) does not appear in the handwriting of anyone connected with our company. It is a statement of the Ace Milk Co. of the amount of milk delivered to Rosal.

922 *Anthony Virzi—for Defendants—Direct*

(Defendant's Exhibit C-1 received in evidence.)

I would receive a statement once each week. The statement of the Ace Co. came on a form imprinted with the name Rugby Farms Inc. I don't know whether the companies were related. I have already testified that I received moneys from Attardi and other persons interested in his partnership. I am familiar with the amount of money given to me for deposit in the business. I do not know of any transactions other than that in this business.

923 ANTHONY VIRZI, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. Kahn:

924 My name is Anthony Virzi, and I have been indicted also under the name of Frank Cavito. I have pleaded guilty to the indictment. I am acquainted with the defendant, Leon Attanasio, commonly known as Joe Messina. I knew him in Galveston, Texas. I do not know all of the defendants in this indictment. Leon Attanasio never was a partner of mine nor did I ever tell anyone that he was. I did business with Emery W. Clapper, the government agent who used the name of Joe Martin. I did business with him at Waco, Texas. I never told him that Leon Attanasio was my partner. I sent numerous telegrams and used many aliases. I sent one telegram (Ex. 135 in evidence) to Biaggio Angelica at Houston, Texas. I signed the name Joe Attanasio. Leon Attanasio had nothing whatsoever to do with this. He was not interested in it. Since I have known him, I have never had any dealings directly

Anthony Virzi—for Defendants—Cross

or indirectly with him in regard to narcotics. I sent the telegram because I wanted Biaggio Angelica to call me. I knew where the Schooner was. I went there frequently. I do not believe I ever received any telephone calls there. My purpose in going there was to obtain food or drink. I know Alphonse Attardi. I have known him since January, 1937. I met him in Houston, Texas. I have been over to his residence. I believe it was on R $\frac{1}{2}$ Street, in Galveston. On that occasion there were numerous people there at a dinner party. Nothing was said or done while I was there, in reference to the purchase or disposition of narcotics of any kind or character. I do not remember if Mr. Attanasio and his wife were present. Some women were there. I communicated with Biaggio Angelica in reference to an automobile. I intended to trade my car in for a new one, and I wished to be introduced to an automobile dealer in Houston. That was the purpose of sending the telegram. (Ex. 135 in evidence) I sent quite a number of telegraphic messages and money orders. I also had sent telegrams for Mr. Attardi at his request because of his inability to write English.

Cross Examination by Mr. Solomon:

I know the woman by the name of Katherine Phillips who conducted a disorderly house. I did not introduce the defendant Gentiluomo to her. I never told her that he was engaged in the narcotic business or that he would sell her narcotics. I never had any narcotic dealings with the defendant, Gentiluomo. I have known him only since I met him in Court. I believe that was on May 2, 1937

928

*Anthony Virzi—for Defendants—Cross**Cross Examination by Mr. Edelstein:*

I have testified that I sent a number of telegrams for Attardi because of his inability to write English. Other than this, I had nothing to do with the money order telegram. At this time, when I sent a telegram or money order directly to Mary Carusotto. I never met her. Attardi had told me that she was his sister-in-law. I do not remember sending a telegram stating "Present money order to Jimmie Di Maggio. Regards".

929

I believe that this telegram (Ex. 130-A in evidence) may have been sent by me. I printed it. It is in my handwriting. I know the purpose for which Mr. Attardi sent the money to New York to Mary Carusotto. It was to be put into the milk business. Prior to sending this telegram, he told me what Jimmie Di Maggio was to do with this money. He said it was for the milk business. I sent this telegram (Ex. 62 in evidence) from Waco, Texas to Jimmie Di Maggio at 350 R $\frac{1}{2}$ Street, Galveston, Texas. I read Italian and can also translate it. The telegram reads, "Half down. Hope to arrive at five o'clock. If not, I have trouble." (Signed) Georgio".

930

Jimmie Di Maggio did not live in Texas. He came to the home of the Attardis with his daughter while on his vacation and this telegram was addressed to the home of the Attardis. I know that the Attardis are the Godparents of Di Maggio's daughter. I am not a native of Texas. I was there about six months before Di Maggio arrived. I did not know him before that time. I went with him socially. The reason for the telegram is that I had an appointment with Di Maggio in Galveston at about six o'clock and I wanted him to keep

Anthony Virzi—for Defendants—Cross

93:31

the appointment in the event that I did not arrive on time. I sent the telegram at about 11 o'clock. By the word "trouble", I meant that my tires were not in good condition. The distance from Waco to Galveston is about 250 miles. This telegram was addressed to 3502 R $\frac{1}{2}$ Street, which is the place where we had a social gathering. I do not know whether Attardi gave up that house.

Cross Examination by Mr. Zelenko:

93:41

I am related to Mrs. Simoncini. She is my niece. Her mother is my sister. I wired money to Mrs. Simoncini. I do not remember when but I do remember how much money it was.

This telegram (Ex. 134 in evidence) reads "Phillipina Simoncini, 120 Arthur Avenue, South Beach, Staten Island. Leave by train Sunday. Go to Galveston, Texas. Wire as soon as you board train, 2002 Market Street, Galveston. Angelio give anni' Notify Commari Money is for you only Cash money order immediately and let one of your brothers help or ask Corsie to help Regards to all See you Tuesday." signed "Augie", I sent referred to in this the money telegram for her train fare to Texas. I never had any narcotic transactions with August Simoncini, nor did Simoncini ever have any interest in my business.

93:51

Cross Examination by Mr. Edelstein:

The telegram which I sent from Waco to Galveston was signed "Georgio". It is an alias. I am not called

Anthony Virzi—for Defendants—Cross

by that name. I do not know how Di Maggio would have determined that it was my telegram. I do not know whether he ever received it.

By the Court:

I do not believe I met him that day. I do not know whether he got the telegram. I had carburetor trouble on the road between Waco and Galveston. I was about 100 miles from Galveston at the time. It was about six o'clock that afternoon.

By Mr. Edelstein:

That is the kind of trouble I had in mind when I wrote it in the telegram.

By Mr. Solomon:

I believe I met Katherine Phillips sometime in March, 1936. I went to her house because it was an "open house". She did not have to advertise that she was running a disorderly house.

Cross Examination by Mr. Martin:

My address in Galveston was 2128 P $\frac{1}{2}$ Street. I had a telephone. Once I sent a telegram to Biaggio Angelica which I signed Joe Attanasio. I did not know that was the name of the owner of the Schooner at that time. I do know that now however. I told Angelica Biaggio to call me at Galveston 725. I know now that that is the telephone number of the Schooner and I knew it when I sent the telegram.

By the Court:

I pleaded guilty in this indictment. I began the telegram by saying "Half down." I meant concerning my trip to Waco. I was not going to do anything particularly in Waco. At that time I had received a sum of money from a man I knew as Joe Martin; I do not remember if it was between the time of the receipt of that money and the delivery of the merchandise that I sent the telegram.

938

Recross Examination by Mr. Edelstein:

The telegram had nothing to do with any illegal transaction with narcotics. I never had any illegal transaction regarding narcotics or anything else with the defendant Di Maggio when he was in Galveston. I knew him personally, in a social way.

Redirect Examination by Mr. Kahn:

939

I gave the telephone No. 725 because I had been in the Schooner before and had used that telephone myself. "

I never spoke to Mr. Attanasio about using his telephone. Many people used it. I had had no previous arrangement with Mr. Attardi about the use of his phone. In Galveston, a telephone installed in a public place is paid for at a certain rate a month, irrespective of the number of calls made. I knew Mr. Attanasio as Joe Messina.

940 *Anthony Virzi—for Defendants—Redirect*

By the Court:

I did not know that Messina's name was Attanasio. There was no particular reason why I used the name Attanasio on the telegram.

By Mr. Kahn:

941 I knew what Attanasio's telephone number was. I remember when I was arrested. It was on December 14, 1937. I made a statement to the Federal Authorities during which I believe the stenographer was present.

By the Court:

942 My use of the name "Joe Attanasio" had no particular significance. I knew that the man who received the telegram would know it was from me because I took it for granted that he knew that I visited the Schooner occasionally and also due to the fact that I had spoken to him a few minutes prior thereto concerning an automobile transaction. I had no particular objection to using my own name. The person to whom the telegram was sent would have to guess who sent it.

By Mr. Solomon:

I do not know the defendant Ralph Liquorio. I never saw him before. I know the defendant Bruno and also the defendant Don Alphonso. I met them on December 21st or 22nd, 1937 in the courthouse. We were brought in for pleading. I did not know them before that day. I did not have any dealings with them. I do not know the defendant, Louis Liquori. I never had any dealings with him.

Vincent Gentiluomo.—for Defendants—Direct

943

VINCENT GENTILUOMO, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. Solomon:

My full name is Vincent Gentiluomo. I live at 1728 Avenue F, Galveston, Texas. At the time of my arrest, I resided in the same city at 1310 Avenue B. I lived in Galveston for about 14 years. I was arrested on October 5, 1937. I am in the business of conducting a package liquor store which is licensed by the State of Texas. I have been in business since about December, 1935. That business was located at 323—20th Street. There is another store in that building called the Schooner which is owned by Mr. Attanasio. In that store, there was sold beer, wine and sandwiches. It is not permitted to sell bottled goods. Prior to this business, I was a shrimp fisherman and owned a boat for the conduct of that business. I went in the fishing business about 1930. I had a State license to do so. Prior to that, I owned a restaurant at 2617 Market Street, Galveston which I operated for about four years. I am married and have four children. I never sold narcotics to anyone nor did I ever handle narcotics. I never brought any to the house of Katherine Phillips. Nor did I ever have a discussion about narcotics with her. I never told her that a man named Joe Messina had sent me there. I never had any kind of business with Katherine Allen. I had been to the home of Katherine Phillips several times but not for the purposes of narcotics. I went for an immoral purpose. I never sent money to anyone in New York to buy narcotics for me. I have not been in New York for the past ten years. I was there in 1924 working as a long-shoreman. I went to Mr. Attanasio's store for drinks all of the time. I knew him well. He sometimes visited my

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Vincent Gentiluomo—for Defendants—Cross

store. It was a public place where anyone could come in and purchase. I do not know a man named Joe Passarello. However, I heard people call him "Black Joe". I never took him to Katherine Phillips' house for the purpose of an introduction. Nor did I ever tell Katherine Phillips that he would bring narcotics to her.

I do not know Anthony Virzi nor did I ever see him before he came to this courthouse. I was never in partnership with anyone for the sale of narcotics.

At the time of my arrest, I was in front of my liquor store. I was watching my store. A man named Mr. Clapper arrested me. He did not tell me why he arrested me. He placed me in an automobile. Katherine Phillips was there at that time. He introduced me to Katherine Phillips. He told me that I had been selling narcotics. I denied this. He asked me whether I knew Cola Gentile. I replied that I did not.

Cross Examination by Mr. Kahn:

My store is next door to the Schooner which is run by Leo Attanasio. Neither of us had an interest in the other's store. We knew each other for 14 years. I know that he cannot read or write. Many people go to his store for their meigs.

Cross Examination by Mr. Martin:

I have been in this country for eighteen years and I am not a citizen. I was a sailor and jumped ship. Leo Attanasio's wife is a niece to my wife. I did not receive

Vincent Gentiluomo—for Defendants—Recross
Alphonso Marzano—for Defendants—Direct

any money from him to open my package store. He once loaned me \$150 to repair my boat. My restaurant had been conducted at 2617½ Market Street.

Katherine Phillips lives on Post Office Street. My restaurant was about a block or a block and one-half from that place. It was located in what is known as a red light district. My restaurant was a restaurant for colored people.

By the Court:

I was at Katherine Phillips' house about two or three times but I never saw her there on those occasions.

Recross Examination by Mr. Kahn:

My restaurant was conducted for colored people. My present business is located about six blocks from Katherine Phillips' residence. It is located on one of the principal thoroughfares in Galveston.

ALPHONSO MARZANO, called as a witness on behalf of the defendants, first duly sworn, testified as follows:

Direct Examination by Mr. Solomon:

I live at 36 Kenmare Street, New York City.

I am one of the defendants in this indictment. I know the defendant, Al Mauro and have known him for a number of years. Lately; about two or three years, he frequented my restaurant which is located at 380 Broome

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Alphonso Marzano—for Defendants—Cross

Street. When I purchased this business about ten years ago, it was a restaurant, poolroom and bakery. I no longer conduct the bakery or poolroom. I never sold narcotics in my life nor did I ever enter into a partnership with Al Mauro, Willie Rose or Jerry Bruno for such purposes. Al Mauro never approached me in regard to forming a partnership for the sale of narcotics nor did I ever store narcotics in the basement of my restaurant. I never permitted anyone to do so.

953.

In 1936, I cut off the telephone wires in my place so as to prevent my customers from placing horse race bets over the telephone.

I am married and the father of two children. I never at any time bought narcotics which were subsequently delivered to Al Mauro to dispose of nor did he ever sell narcotics for my account. I did not deliver three pieces of opium to him in 1936 nor at any other time.

Cross Examination by Mr. Martin:

954

I do not know a man named Mike Cellentano, also known as Mike Celli. I do not remember him as a witness in this case. I heard him say that he knew me, but I have never spoken to him. I have never seen him until he was in this courtroom. I do not know Louis Liguori. I never saw him until this trial started. I do not know Ralph Liguori. I know Al Mauro. He visited my restaurant at 380 Broome Street. In 1936, I remember him because of a disturbance he was creating, abusing some of my customers.

I know Willie Ross. I knew him as an acquaintance. In the Italian section we all know each other. He was

Harriet Morgan—for Government—Rebuttal—Direct

not a steady customer of mine. He came in once in a while and ordered some coffee. All of the people to whom I refer, who come into my place, are for the most part Sicilians and Napolitans. They all come from the South of Italy. I believe I know Mrs. Ross. She visited my home. I am the sole proprietor of the business at 380 Broome Street but I have people working for me. When I bought that place, it was worth between \$7,000 to \$10,000. The former proprietor sold it because of an accident which happened near the place. I bought it for \$3,000. For four or five years, the place was never closed. It was open day and night. I had three employees. I paid the pastry baker \$40 a week. Gradually as the depression went on, my business decreased and I have but one man working for me now. I have never been on Elizabeth Street. I know where it is. I do not know where 90 Elizabeth Street is, Elizabeth Street is about six blocks from my store. I live on Kenmare Street and have been in that neighborhood for about fifteen years.

By the Court:

I never played cards with Al Mauro in my restaurant. I do not recall ever playing with Willie Ross. I may have played cards with Jerry Bruno.

HARRIET MORGAN, called as a witness on behalf of the Government, in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. Martin:

I am married. My husband's name is Charles Morgan.

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Harriet Morgan—for Government—Rebuttal—Cross

I have two children. My husband works for the WPA. Before that, he was a hack driver and also worked as a longshoreman. I know the defendant, Louis Liguori. I saw him in April, 1937. I saw him on the morning of April 13, 1937, at my home, 3017 43rd Street. He did not have a conversation with me. He spoke to my husband. I heard what he said; he asked him to come to the City to 56th Street and 8th Avenue to see some fellow about a job; he would be able to earn some money. This took place at 2:30 in the morning. My husband left and returned about 5 o'clock the same morning. I saw Louis Liguori the same afternoon. He was outside in a taxicab, waiting for my husband. I did not speak with him. I saw my husband join him. Since that day, I have not seen Louis Liguori. The last time I saw my husband was two weeks before Christmas, 1937. I have not seen him since that time.

959

Cross Examination by Mr. Zelenko:

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I received a subpoena in this case last night. Before that time, I had never been subpoenaed. The testimony which I have just given, I gave previously, about a month ago, to Mr. Artis, one of the Government Agents. I am not angry with Louis Liguori. I do not know where my husband is. Louis Liguori came to my house at 2:30 A. M. on April 13. I remember that day because that was when my husband left. It was three days before my baby's birthday. Since that day until Mr. Artis spoke to me, I did not tell anyone about what transpired on April 13, 1937. I brought my husband to Court with a warrant to support his children. He was back to my home but not to stay. He just came to visit. I am not

Harriet Morgan—for Government—Rebuttal
—Redirect—Recross

mad at Louis Liguori. No one can make my husband do what he does not want to do. I told no one about this happening for a year, but I remember it very clearly. Louis Liguori came to my home at 2:30 A. M. and my husband returned at 5:00 A. M. My husband left home at odd hours many times before that particular occasion. It was not the first time that he had left me in the middle of the night. I can remember that night because I had applied for home relief and he was supposed to be there that day. He very seldom left home in the middle of the night. He used to leave the house about 8 or 9 o'clock. He was not a hack driver at that time. His license had been revoked. He was a foreman for the W. P. A. He was not working as a longshoreman. Then he got this job as a longshoreman. At the same time he worked for the W. P. A. I never visited his place of employment. I do not know what his work was except what he told me.

Redirect Examination by Mr. Martin:

I saw my husband's working papers for his job in the W. P. A. He had a Union card in the Longshoremen's Union. I have seen that card. It was under the name of James Kennedy.

Recross Examination by Mr. Zelenko:

I know a young lady by the name of Mae Murphy. My husband did not live with her but I met him with her. I do not blame Louis Liguori because of the fact

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*Motions for Direction of Verdict of Acquittal
Charge of the Court*

that my husband went with Mae Murphy and I am not angry at him for that reason.

Motion made by counsel for defendnat Colagerio Iacono for direction of a verdict of acquittal on the ground that there is a variance between the proof and the crime set forth in the indictment, that is, the indictment sets forth one conspiracy, whereas the proof shows a series of separate and distinct conspiracies, and that such variance is prejudicial to the rights of the defendant. Motion denied, exception to defendant.

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Motion made on behalf of defendant Colagerio Iacono for verdict of acquittal, on the ground that there is no evidence to connect said defendant with the conspiracy, and upon the ground that all the evidence is as consistent with innocence as with guilty. Motion denied, exception to defendant.

Motion made on behalf of defendant Jerry Bruno to direct a verdict of acquittal upon the same grounds as made at the end of the Government's case. Motion denied, exception to defendant.

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The Court (HULBERT, J.) Members of the Jury:

You have listened with great patience and forbearance throughout the trial of this case, and the Court feels from the attention which you have given to the presentation of the evidence that you have listened interestingly and understandingly, and hopes that with the submission of this case to you that in your deliberations upon the

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evidence you will be able to arrive at one mind upon the final disposition of the case as to each of the defendants.

It is a matter of common knowledge that the use of opium has been the curse of the people of China for generations, and people in other parts of the world, but it was in comparatively recent years only that our Government found it necessary to legislate against the use of narcotics, except for limited purposes. Now by Acts of Congress of the United States the Government has provided for complete legislative control of traffic in those commodities. There has been established at the site of our Government in Washington the Office of Commissioner of Narcotics, and the importation thereof has been forbidden by statute except that such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and other legitimate uses only, may be imported under such regulations as he shall prescribe.

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Opium which is lawfully imported is subject to duty under our tariff law and must be sold in or out of the original package, to which also must be affixed the requisite government stamps showing the payment of the tax imposed under the Internal Revenue Laws. Provision is made for the recordation of sales which are upon prescription or order and the data thus compiled is kept available for a period of two years. Consequently, the unlawful importation of narcotics is a crime. The evasion of custom duties and of the Internal Revenue Tax is a crime. The unlawful transportation or unlawful possession, the unlawful purchase and the unlawful sale of narcotics are crimes, and any person deemed to have violated any one or all of those laws is subject to indictment for what are known as substantive crimes and are liable to prosecution in the districts where those indict-

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ments are found. The penalties therefor are severe, but none of the defendants here in this case appear here upon any indictment for any substantive offenses.

This indictment is founded upon a statute known as Section 88 of Title 18 of the United States Code Annotated. It is very brief, and I propose to read it to you in its entirety:

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"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties commit any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

That means that the fine may be from \$1 to \$10,000 in the discretion of the Court, and the term of imprisonment may be from one day to two years.

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Fifteen defendants are now on trial charged with conspiracy to import, possess, conceal, transport and sell narcotic drugs,—and let me emphasize to you again that they are not being tried for the substantive offense of having done any one of those things, but they are on trial for the conspiracy as alleged to do these things.

On September 29th of last year an indictment was filed in this Court charging 74 defendants with that crime. On December 6th of last year another indictment, frequently referred to during this trial as a superseding indictment, was filed, which eliminated certain defendants and substituted others, increasing the total named to 88. One of these defendants, Cavaretta, has since died.

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Some have pled guilty and are awaiting sentence. A dismissal was granted as to two, LaGaipa and Vallone. A verdict of acquittal was directed to Mary Carussotto and Josephine DiMaggio. A severance was had as to others yet to be tried for one legal reason or another, and the present trial relates only to the 15 previously referred to.

There will be furnished to you at the conclusion of this trial a copy of the indictment, and it is the suggestion of the Court to counsel, and with which I believe counsel will agree, that the 15 defendants who are now on trial be indicated so that there can be no misunderstanding in your minds with respect to the defendants who are the subject of consideration for your verdict.

974

The nature of the conspiracy has heretofore been explained by counsel at length, but I shall refer to it in the language of the indictment itself:

"That heretofore, to wit, beginning on or about the 1st day of October, 1935, and continuing to the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court; at the Eastern District of New York (which includes Long Island); at New Orleans, Louisiana; at Waco, Texas; at Galveston, Texas; at Houston, Texas; at San Antonio, Texas; and at various other places in the United States of America to the grand jurors unknown"—and then it names the 88 defendants—"The defendants herein, and divers other persons to the grand jurors unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, to vio-

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late the United States Code, Title 19, Sections 1591 and 1593 (a) and (b); Title 21, Sections 173 and 174; and Title 26, Sections 1043 and 1044.”

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Now I have already referred to those. The Court does not feel it necessary to take the time to read to you or even digest for you the language of those particular statutes because, as I have said, they form the basis for an allegation upon which a substantive indictment might be founded. The first two sections which I have just mentioned by number relate to the Customs Laws; the second two relate to the Pure Food and Drug Act; and the last two refer to the Internal Revenue Laws; so that one is with respect to duties under the Tariff Act, and another is with respect to the unlawful transportation, possession, concealment, purchase and sale of narcotics, and the last relates to the Internal Revenue Tax.

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“It was part of said conspiracy that the said defendants herein, together with divers other persons to the grand jurors unknown, at the Southern District of New York and within the jurisdiction of this Court, would import and cause to be imported into the Southern District of New York large quantities of narcotic drugs on various transatlantic steamships, certain of which steamships were scheduled to arrive at the Port of New York; contrary to law, in that certain of said narcotic drugs were subject to duty and should have been invoiced and for which narcotic drugs dutiable consumption entry should have been made at the United States Custom House and Port of Entry with the United States Collector of Customs at the Port of New York, and that said defendants did fail to manifest the said narcotic drugs, said

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narcotic drugs being subject to duty under the Tariff Act of 1930, contrary to the provisions of United States Code, Title 19, Sections 1591 and 1593 (a) and (b), all of which the said defendants then and there well knew; and further contrary to law in that the importation and bringing of any narcotic drug into the United States except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only is expressly forbidden by"—the sections of the Pure Food & Drug Act.

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"It was further a part of said conspiracy that the said defendants herein and divers other persons to the grand jurors unknown would arrange for the transportation of the said narcotic drugs from the pier of the same steamships or from some point or points within the harbor of the Port of New York, the location of said point or points being unknown to the grand jurors, after said narcotic drugs had been removed from the said steamships, to some point or points within the Borough of Manhattan, City, State and Southern District of New York; and there pursuant to a prearranged plan and scheme certain of the said defendants would receive the said narcotic drugs, communicate the fact of their arrival and receipt to other members of the said conspiracy, whereupon, in furtherance of said conspiracy, certain plans would be made and adopted for the further sale, transportation and distribution of said narcotic drugs to others of the said defendants, some in the Southern District of New York, some in Brooklyn in the Eastern District of New York, and others at distant points in the United States

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of America, to wit: New Orleans, Louisiana; Waco, Texas; Galveston, Texas; Houston, Texas; San Antonio, Texas; and various other places in the United States of America to the grand jurors unknown.

"It was further a part of said conspiracy that pursuant to a prearranged plan and scheme the said defendants would sell and cause to be sold and make arrangements for the sale and disposition of the said narcotic drugs, and would receive payment therefor either in the name of the individual who acted as the recipient of the money or under some fictitious name for the purpose of concealing their true names and the nature of the business in which they were unlawfully engaged, contrary to law in that said sales of narcotic drugs would not be in the original stamped packages or from the original stamped packages, that is to say, that there would not be affixed to the containers in and from which the said defendants would sell the said narcotic drugs as aforesaid any United States Internal Revenue Stamps whatsoever, as required by (statute); and further contrary to law in that the said sales of narcotic drugs would not be in pursuance of written orders on forms issued in blank for that purpose by the Commissioner of Internal Revenue of the United States as required by (law).

"It was further a part of said conspiracy that certain of the said defendants and divers other persons to the grand jurors unknown would conceal said narcotic drugs at some place or places in the Southern District of New York, unknown

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to the grand jurors, pending their ultimate disposition.

"It was further a part of said conspiracy that certain defendants, members of said conspiracy, and divers other persons to the grand jurors unknown, at the Southern District of New York and within the jurisdiction of this Court, would transport and cause to be transported large quantities of the said narcotic drugs from the Borough of Manhattan, City, State and Southern District of New York to various points in the State of Louisiana and Texas and various other points in the United States to the grand jurors unknown, after said narcotic drugs had been imported and brought into the United States contrary to the law, and that the said defendants then and there would well know that the said narcotic drugs had been imported and brought into the United States contrary to law."

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Now there are set forth seven overt acts, of which two have been stricken out, so that there are five overt acts for your consideration, and it is necessary that at least one of those overt acts shall have been established as to at least one defendant in the conspiracy.

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The elements of a criminal conspiracy are an object to be accomplished which must be either: (1) The commission of an offense against, or to defraud, the United States; (2) a plan or scheme embodying means to accomplish the object; (3) an agreement or understanding between two or more persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the scheme, or by any effectual means; and (4) an overt act by one

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or more of the conspirators to effect the object of the conspiracy as respects the overt acts charged in the indictment.

There are three possible verdicts which you may render:

1. You may find all of the defendants on trial guilty.
2. You may find all of the defendants on trial not guilty.
3. You may find some of the defendants on trial guilty and the others not guilty.

It is essential to a verdict of guilty that the jury find the existence of a conspiracy, and also the commission of one of the overt acts charged in the indictment. The indictment is not evidence in any sense, but is a mere accusation which it is incumbent upon the Government to sustain by the proper measure of proof.

Every defendant in a criminal case in this country is presumed at the outset to be innocent, and this presumption exists in his favor and abides with him for his proper protection until his guilt is established by the requisite measure of proof. This is true not only as respects the accusation as a whole, but also as respects every material element of it.

The burden of proving guilt rests upon the Government and must be sustained by evidence which establishes guilt beyond a reasonable doubt. This burden rests upon the Government throughout the trial.

The term "reasonable doubt" means a doubt for which a good reason can be given in the light of all the evidence. It means a doubt which is substantial, and not merely shadowy. It does not mean a doubt which is merely

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capricious or speculative; neither does it mean a doubt born of reluctance on the part of a juror to perform an unpleasant duty, nor a doubt arising out of sympathy for a defendant or out of anything other than a candid consideration of all of the evidence presented.

It is for the Court to state the principles of law which are applicable, and it is also for the Court to solve all questions with respect to the admission and rejection of evidence. If in that respect the Court has made any errors there is a speedy remedy available to the defendants, but when the jury have rendered their verdict upon the facts there is a greater finality to their decision.

You are the sole judges of the issues of fact and of the real truth of whatever is involved in those issues. It is also the province of the Court to assist the jury, in so far as this can be done, by referring to subsidiary questions of fact, or to the evidence or state of the evidence bearing upon them, but the jury should regard all expressions of the Court in this connection as made for the purpose of aiding the jury and not of directing it. If the Court's expressions are not in accord with the jury's understanding of the evidence or its reasonable import, they are to be rejected and effect is to be given by the jury to its own understanding and conclusion, for, in the last analysis, as I have said, you are the sole and exclusive judges of all questions of fact.

You are the exclusive judges of the weight of each of the several items of evidence and are also the exclusive judges of the credibility of each of the witnesses. In passing upon the credibility of a witness and the weight to be given to his testimony, the jury may consider his appearance upon the witness stand; whether he testified with candor or otherwise, or his interest in the case.

Charge of the Court

It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony.

The testimony of an accomplice may be admitted in evidence, and if the jury deems him credible and his testimony worthy they may give it weight accordingly, but the fact that he is an accomplice suggests that his testimony be examined with care.

Where it appears that any witness has wilfully testified falsely respecting a material matter, the jury may reject his testimony in its entirety, save as it finds corroboration or support in other evidence.

A verdict of guilty cannot be rested upon mere suspicion, or even upon mere probability, but must be founded upon evidence and inferences reasonably or naturally arising from the evidence.

For two or more persons to conspire, confederate or combine together to commit, or cause to be committed, a breach of the Criminal Law of the United States is an offense of grave character which involves not only a plot to subvert the law but also the preparation of the conspirators for further criminal practices. Conspiracies are not formed openly on the highways or byways. They are almost always characterized by secrecy, rendering detection difficult and requiring much time for their discovery. Because of this the statute has made a conspiracy to commit a crime a distinct offense from the crime itself, and therefore, as I pointed out to you in the first instance, the question under consideration here

Charge of the Court

997

is whether the crime of conspiracy has been committed, and not one or more of the substantive offenses.

A scheme to commit an offense against, or to defraud the United States when shared amongst several, may become a conspiracy.

As respects the overt acts charged in the indictment, it is enough that it appears from the evidence, by the required degree of proof, that any one of the overt acts was committed as charged.

Where two or more act together to accomplish something unlawfully, such as the commission of an offense against, or to defraud the United States, a conspiracy is shown even though there be no direct evidence of an express agreement. In short, a mutual implied understanding is sufficient, so far as proof of a combination is concerned. An agreement is generally a matter of inference deduced from acts of the persons accused, done in pursuance of an apparent criminal purpose. It is not necessary that all of the conspirators be acquainted one with another. It may be that they have not been previously associated together. One conspirator may only know a few of the others, but where one who knows that others are acting together to violate the law and he intentionally cooperates to further the object of the conspiracy, he becomes a party to it. When men enter into an agreement or conspiracy to accomplish an unlawful end they become agents for one another and the act of one, in pursuance of the common purpose, is deemed to be the act of all and to make all responsible for that act. It is not necessary to conviction that all conspirators should join in the overt act if the act of one done in furtherance of the conspiracy becomes the act of all.

998

999

The jury will be composed of twelve citizens. While

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Charge of the Court

1001

undoubtedly your verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by a comparison of views and by arguments among the jurors themselves. Each juror should listen, with a disposition to be convinced, to the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he shall close his ears to the arguments of other jurors who are equally honest and intelligent with himself.

1002

It is urged on behalf of the defendants, that in no view of the evidence can it be said there was a general conspiracy continuing from its alleged inception in New York, through Louisiana into Texas, but that in the most favorable view to the Government there were several independent or separate schemes or conspiracies. If this were true the prosecution would fail. The Government, on the other hand, takes the position that the several transactions were but parts of a greater whole, and it elects to adhere to this view and to ask that a verdict be rendered accordingly.

The Court is of the opinion that there is substantial evidence tending to sustain the Government's view in this regard, but at the same time cautions the jury to make a very careful analysis of the evidence for the purpose of determining whether each and every one of the 15 defendants on trial are inseparable parties to that conspiracy.

Now let me just say this to you, and I do not do this with a purpose of placing any emphasis upon the

Charge of the Court

evidence in this case whatever, but I simply mention certain incidents in the testimony in this case for the purpose of your guidance and with a view to aiding you in reaching a solution of the problem which will momentarily be yours.

From the evidence in this case it appears that narcotics were imported into the Port of New York. In one instance they came from Canada by way of Boston, and in another instance, or more perhaps than one instance, and that is for you to say, they arrived upon transatlantic liners. Now who in this case had to do with the importation of those narcotics? In the first place, you have the testimony of Cellini or Celli that he was responsible for bringing the narcotics down from Canada to New York. And then you have testimony in this case similarly to connect the Caputos with the distribution of narcotics from a point in Brooklyn in which certain other defendants including Ignaro and Lago and Ruppolo were involved, and it is my opinion—it may not be yours, and you are not bound to accept my view—that it was they who were concerned with the importation of narcotics which came off one or more of the transatlantic steamers.

Of course with the reception of these narcotics into the United States there had to be some method of distribution. Well, this case began with the testimony of Mr. Esch who, as Dr. Swanson, was sent to New York by the Narcotic Bureau for the purpose of making an investigation. Apparently his first contact was with Cellini or Celli, and then through him he met Ruppolo and Di-Marso and Scarbetti, known by other aliases including that of Danny Murphy.

Now it appears that there were two partnerships, so-

1006

Charge of the Court

called, referred to in this case; one was the partnership in which Mauro, who was brought into contact with Esch through Ruppolo and DiMarso, claimed to have with the defendants Don Alphonso, Jerry Bruno, Willie Ross and himself. That partnership he says ended before Christmas of 1936.

The other partnership consisted apparently of Ruppolo, Ignaro, Felix Papa and Vincent Carreria, referred to in this case as Jimmy the Blond.

1007

Now Ruppolo testified that he first got into this activity through the defendant Ralph Liguorio, whom he claims to have met and recognized from boyhood, and Liguorio took him over to Brooklyn, and in that way he learned of certain transactions in narcotics in which the defendants Caputo—there are two of them—Lago and Boysa and Ignaro were involved. Each had contact with this Brooklyn organization and he had contact with the organization of Jimmy the Blond. He procured 25 ounces of the narcotics which Celli brought down from Canada by purchase, that narcotic delivery having first been made by Celli to Mauro and then by Mauro to Dick DiMarso, referred to here as Diamond Dick, and there is some testimony with respect to some conversation alleged to have been had between Jerry Bruno and Mauro before Mauro delivered this 25 ounces and they came into the possession of Mr. Esch.

1008

It is unnecessary for me to review in detail the testimony. It has been gone over by counsel, and I am sure that the jury paid very close attention to it and have a pretty firm recollection about it. But you will remember that there was testimony in the case that a sale was made and a delivery of narcotics was had to a man by the name of Tony Lima at a house on East 13th Street, and that sales were also made to a man

Charge of the Court

1009

named Nicholas Gentile of 90 Elizabeth Street, and they are both defendants in this case although not presently on trial.

Then the evidence shows that Lima turned up down in Louisiana, as did also Nicholas Gentile, and then both of them are found again over in Texas, and there are brought into the case the defendants Attardi, who are residents of New York, and the defendant Virzi who, according to his testimony, is a resident of Staten Island, and then there were other developments down there that brought into the case the names of the defendants Attanasio and Feraci and Mike Sgitcovich and Joe Macey, now on trial.

1010

And in that connection I want particularly to emphasize to you that in this case there are three defendants with somewhat similar names: One is Sam Maceo, who has been referred to as a resident of Galveston, Texas; then there was Massa, who testified here as a witness; and then there is Joe Macey, from whom one of the agents, I think Mr. Templeton, testified he purchased a quantity of narcotics. But I ask you to keep those names in mind so that you won't confuse the evidence as to one with the others because of the similarity of names.

1011

Of course a conspiracy must be established by acts and not by hearsay testimony, that is, conversations not had with or in the presence of the person sought to be bound by those conversations. There are a great many experiences we have in life which show that under certain circumstances or conditions an act of a person may be very innocent. I might go to a ball game and you might come up there and you might find that I was seated between two men who were noted criminals. I

1012

Charge of the Court

might not know that. It may have been the only seat available when I came in and I sat down between them. It could not be said from my occupying that position that I was in any way involved or that I was prejudiced by the presence of either one of those men sitting alongside of me. I might talk to them during the course of the game and my conversation might relate entirely to the progress of the game.

1013

But suppose that you went up to the baseball park six or seven times and every time you went up there I was seated between the same two men and engaged in a conversation with them. Suppose that I entered the ball park with them, and suppose that I left the ball park with them. Then those would be circumstances that might be considered, with other circumstances, from which you might draw such inferences as a reasonably prudent person would draw to determine, upon all of the facts, what my relationship with those men was, and whether I was involved in some scheme that might later come to light and which, if established, would continue the commission of the crime of conspiracy.

1014

Of course there are grades of evidence in this case. The only testimony by word that connects, for example, the defendant Alphonso with this case is that of the testimony of Al Mauro, and Don Alphonso took the stand and denied in toto, not only the conversation, but any relationship that Mauro ever claimed to have had with him. One or the other of those men is not telling the truth. It is not possible that they could both be right, and it is for you to determine upon the evidence, and your analysis of it, where in your opinion, the truth lies.

Reference has been made here to the testimony of Katherine Phillips when she was a defendant resisting

Charge of the Court

1014

transfer from the place of her arrest to the place of trial, and under examination by her own lawyer she testified that she was acquainted with Sam Maseo of Galveston, Texas; that she had known him since 1923, but that she only knew him well enough to recognize him when he passed by on the street. When she took the witness stand here she testified that she had lived with Sam Maseo, I assume in the relationship of man and wife for months. Now that is a statement made by her that you will have to weigh and reconcile, and you will have to determine with respect to her testimony where the truth lies in order to accept her testimony in this case.

1014

As to the defendants with respects to whom the evidence in this case shows that they were brought into it by conversations which were had not in their presence, you cannot consider those conversations for the purpose of establishing the crime of conspiracy. But you may consider those conversations if you find upon other facts that the crime has been established and those statements were made by a person in the conspiracy with respect to another person in the conspiracy in furtherance of the conspiracy.

1014

I realize in cases of this character that it is very difficult, and I am going to try to illustrate it for you by an example: Let us assume that there were 14 directors of a corporation and someone desired to enter into a corrupt bargain with a majority of the directors of that corporation for the purpose of inducing them to do something to his benefit and against the benefit of the corporation itself and its stockholders, and he went to director Mr. A and he proposed his scheme to A, and A said, "I am in with you on that". Now there is a conspiracy between the man who approached A, whom

Charge of the Court

we will call X, and A. And thereupon A went to B and he laid the facts before B, and B made him no answer. B gave no indication that he was in favor of and intended to become a party to this scheme. The mere knowledge on the part of B that such a scheme was on foot would not be enough to make him a co-conspirator because he did not enter into the corrupt bargain. He knew of it, but that knowledge is not enough. Thereupon A went to C and he stated the facts to C, and C agreed with A to become a party to the scheme. Now you have A and C. B is out. Then C went to D and proposed the scheme to D. Now whatever C said to D quoting or purporting to quote A would be binding on A whether A knew about it or whether C misrepresented A, because A is in the conspiracy and C is in the conspiracy, and whatever C says to A he is acting as A's agent. If in the conversation between C and D, there was a telephone tap and somebody listening in on the wire heard that conversation he could not testify to that conversation for the purpose of establishing that D was in the conspiracy. There must first be proof that D had joined the conspiracy before that conversation would be admissible as to him, unless in that conversation he gave utterance, by his own word of mouth, to his acquiescence, but anything that was heard in that telephone conversation, so far as C was concerned, would be binding on C because he said it, and anything that you or I say is binding on us, but it would also be binding on A because C was in the conspiracy, A was in the conspiracy and C was acting as A's agent.

Now if D came into the conspiracy then that conversation would be equally binding on D as it was upon C, because they were both parties to it and it would be equally binding upon A.

Charge of the Court

1021

I have tried to make that clear because in the circumstances of certain defendants here you may or may not feel—I cannot tell—that there are acts which, while they may tend to indicate to you that certain defendants may possibly have been in the conspiracy, you may have a doubt, and that doubt might be resolved to considering the conversations that were had. That you must not do. You must first satisfy yourselves that there was a conspiracy, and I entertain no doubt in my mind that there was a conspiracy. Somebody conspired to take the drugs they had on hand and to dispose of them somewhere.

1022

But who joined that conspiracy? Who of the defendants on trial joined in the conspiracy to assist in the distribution of those drugs; and do the acts of those defendants and the inferences, without building an inference on an inference, do the inferences reasonably to be inferred by an ordinarily prudent person justify the determination beyond a reasonable doubt that certain of these defendants, any or all, joined that conspiracy? And if you find they did, then you may consider any testimony that has been given in this case by any defendant as binding upon them, if it was in furtherance of the conspiracy.

1023

But suspicion, speculation and surmise are not substitutes for facts. There must be evidence of the facts and the reasonable inferences to be drawn therefrom, and if the acts of any of the defendants are as consistent with innocence as his guilt, then you must give such defendant the benefit of the doubt and render a verdict of acquittal as to him.

Certain character witnesses have been brought into this case. Of course you all know what character witnesses are. You know from your own experience. Some-

024

Charge of the Court

025

times you may know a person pretty well or you may not know him at all. Sometimes you may have even a slight acquaintance with the man and be willing to stake your reputation on his honesty and good character. But character witnesses in cases of this kind may have the effect of creating a reasonable doubt in your mind where the evidence upon the issues may be very close, and you may be uncertain one way or the other as to whether guilt has been established or not, and if the character witness's testimony is of such a nature that it will add to and aid you in reaching a determination, ~~or~~ if it will overcome the shadowy doubt that you might have in your mind, then you, of course, are entitled to give it such weight as you feel it is entitled to, just as you weigh the testimony of any other witness in the case.

026

Rare indeed is the case in which a conspiracy can be established by direct proof and therefore circumstantial evidence is invariably relied upon. But there are many known instances where circumstantial evidence has been more convincing and conclusive than direct evidence. In the case, for example, of an alibi: The only thing you may have to go upon is the testimony of one or two eye witnesses who saw a man toward the close of day, when dusk was falling, and they gave it as their opinion from their observation that the man leaving the scene of an occurrence was not the defendant. That is direct proof. But there may be such a chain of circumstances placing that man in that position that the circumstantial evidence would far outweigh the direct evidence.

Now in this case you must weigh the circumstantial evidence with this thought in mind; that if it is as sus-

Charge of the Court

ceptible of the inference of innocence as it is of guilt, you give the benefit of the doubt to the defendant.

After all, ladies and gentlemen, this case is of importance both to the Government and to these defendants. The Government is interested in preserving the health, and comfort and the welfare of its citizens; and the defendants are interested in maintaining their right to life and liberty, which we all hold dear to ourselves. It would be most desirable that everyone who was charged with a crime and who is guilty of a crime might be convicted of it. But just because a crime has been committed does not mean that someone has to be punished for it, but that that punishment must follow a conviction and that the conviction must be based upon the submission of, and the consideration of, proof which establishes the guilt of the person prosecuted by the measure of proof that I have already indicated. And while it may be said to be desirable that the guilty be punished, it is equally as desirable, from an altruistic standpoint, that no innocent person should be punished as guilty.

The administration of justice is the firmest pillar in good government. And the jury system is the bulwark of our liberty. You sit here as citizens. You are a part of the Government. So is Mr. Martin and so are each of the counsel for the defense, and so is the Court. But we disengage ourselves in a certain sense in order to discharge the peculiar duty which devolves upon us by the oaths that we have taken as officers of the Court in this particular case. This is not a case for prejudice, for bias or sympathy, or fear or favor, but this is a case to be determined upon the evidence which has been adduced here during the course of the trial.

Charge of the Court

1030 In conclusion may I say it is my hope, as I am sure it will be your purpose when you retire to the jury room, that you will give such earnest and conscientious consideration to this case that when you have returned and reported your verdict you will have a conscientious satisfaction that each and every one of you have earnestly and honestly discharged the duty which the law laid upon you when you were selected and sworn as jurors in this case.

1031 I have noted that some of the jurors have made notes during the course of the trial, and I am sure that those notes have served them during the trial to aid them in connecting facts together, but I feel impelled to say that you should not take the notes into the jury room and I do that for this reason: Jurors may have the exhibits. We have nothing to do with the exhibits except that they come into court and are presented here and if they are received in evidence they are available to you for consideration. If you are in doubt in your minds with respect to what a witness testified to, you may come back and have the stenographer read it, but you must come in a body. You must all hear it, and it seems to me that while one or more jurors have notes that would contravene the purpose of the law that only the stenographer may be resorted to, and his notes, transcribed or read in order to afford the jury the opportunity to supplement their recollection. Now it may not be necessary for you to do that.

1032 There will be, of course, some differences between you with respect to certain facts, but if you do feel that in order to resolve those facts into a final conclusion you want the testimony read, you have that right, and you have the right to send for any exhibits

Requests to Charge
Verdict
Motions to Set Aside Verdict

1033

that you may want to consider. You have the right to come back here for further instructions, but it is the suggestion of the Court that if you have any communication to send that you do it in writing through the person whom you select as the foreman of your jury.

There have been certain requests submitted to me, and as to any of those requests which I have not incorporated in my charge, the respective counsel may consider that those requests are rejected and an exception entered as to each one.

1034

Are there any exceptions to the charge as delivered?

Mr. Edelstein: On behalf of my two clients there is no exception to the charge as delivered. But I want to direct your Honor to certain charges which I think, if I direct your attention to them, your Honor will charge.

The Court: What numbers are they, Mr. Edelstein?

Mr. Edelstein: One is No. 37.

1035

The Court: I feel that I have already covered that.

Mr. Edelstein: I respectfully except.

Jury retired and brought in a verdict of guilty against defendants Iacono and Bruno, and other defendants.

Motion made on behalf of defendant Jerry Bruno to set aside the verdict on the ground that it is contrary to law, and against the weight of the evidence. Motion denied, exception to defendant.

Motion made on behalf of defendant Colagerio Iacono upon the ground that the verdict is contrary to law and

Decision

1036

against the weight of the evidence, and that there is no evidence to show participation of the said defendant in the conspiracy; that all of the evidence is as consistent with innocence as with guilt; that the variance between the proof and the crime set forth in the indictment was substantial and prejudicial, in that different conspiracies were proven than that charged in the indictment.

1037

The Court: At the close of the trial of this case a motion was made by counsel for the defendant Colagerio Iacono, Mr. Edelstein, to set aside the verdict as against the weight of evidence and upon other grounds stated, and it was pointed out by Mr. Edelstein at that time that the record itself was devoid of any evidence so far as that particular defendant was concerned, except checks which were introduced and received in evidence, bearing his name as an endorser thereon.

1038

I have given a good deal of thought to the motion. As to this particular defendant a swallow does not make a summer, but when the swallows begin to gather we know that summer is nigh. Neither is it possible, except perhaps in very rare cases, to establish the crime of conspiracy by direct testimony. It must be by circumstantial evidence and yet that circumstantial evidence must be of a character which goes beyond speculation and forms a basis of fact upon which, or upon the inferences reasonably drawn therefrom by the jury a verdict may be found and sustained.

In this case there is proof of the fact that Nicolo Gentile at one time carried on business at 90 Elizabeth Street in New York and that during that period he made purchases of narcotics from certain of the defendants. The defendant Tony Lima made purchases and took delivery in New York. Gentile went from New York

Decision

to New Orleans and there he consorted with Lima. Then Gentile went to Texas and he consorted there with other defendants. There is no evidence in the case to show that Iacono consorted with Gentile either in New York, New Orleans or Texas; but one of the defendants in this case, Frank Cicciofera, is shown to have had an association in the narcotics traffic with Lima, and Cicciofera's address in New Orleans was 1225 Chartres Street, and he entered a plea of guilty during this trial.

One of the contentions of the government is that the payments for the narcotics sent to and sold at New Orleans were arranged for in New York by telegram. Exhibit 150 is a money order issued November 5, 1935, by the Western Union Telegraph Company at New Orleans to the defendant Colagerio Iacono, 90 Elizabeth Street, New York, and received, endorsed and cashed by him.

The government's witness, whose qualifications as a handwriting expert were conceded, having compared the original of that telegraph money order with the admitted handwriting of Cicciofera as a standard, testified that the name of Anthony Iacono, by whom that telegraph money order was alleged to have been sent, was signed by Cicciofera.

Exhibits 139, 138, and 137 are checks of the Western Union Telegraph Company dated November 5, 1935, December 12, 1935, and January 4, 1936, all issued in the name of Colagerio Iacono, at the 18 Delancey Street, New York City office of the Western Union, for moneys telegraphed on those dates from New Orleans by Anthony Iacono in the respective amounts of \$500, \$500 and \$1,000. Exhibit 90 is a like remittance of \$1,000 from New Orleans, dated January 21, 1936, the name of the sender

042

Decision

not being given. Exhibit 86 is a like remittance of \$800 from Sam in New Orleans, dated March 31, 1936. The name of the defendant is spelled Gologero Iacheno, and this check too bears his acknowledged genuine endorsement.

043

Nearly a year intervened between the dispatch of Exhibit 86 and Exhibit 88. On April 29, the Western Union issued a check at 18 Delancey Street in New York for \$1500, telegraphed to Colagerio Iacono by Joe Gagliano, another defendant not on trial. Exhibit 140 is a Western Union check for \$1,000 issued at 18 Delancey Street, New York, May 12, 1937, as having been telegraphed to New Orleans by Jerry Fradella, who was identified upon the trial as Jerry Feraci, one of the defendants convicted. The same Jerry Feraci had telegraphed \$1,000 on February 17, 1937, and \$1400 on April 15, 1937, to Nicolo Gentile at 90 Elizabeth Street, New York.

044

On behalf of Jerry Feraci there was offered in evidence by stipulation a concession that if Francis T. Giacona were called as a character witness for Feraci he would testify that he is the secretary and treasurer of the Southern Wine Company, Inc., whose address is No. 1225 Chartres Street, New Orleans, Louisiana; that his company had regularly employed Jerry Feraci as a salesman and representative since August, 1936, continuously to the date of the trial; that he had received each week by check a salary of \$25; that he was known to be a steady worker.

As I have said, suspicions, surmise and speculation can not sustain a finding of participation in a conspiracy, but direct proof is seldom available and it is generally sufficient to show that the persons charged therewith pur-

Decision

1045

sued by their acts the same object by the same means, and the jury may infer from the concurrence of the acts of the parties that the result did not follow from mere accident. There are two or three acts in this case from which the necessary inference may properly be drawn—the relation of the defendant Cicciofera with the address 1225 Chartres Street in New Orleans; the fact that he sent the first telegram in evidence in the name of Iacono to the defendant Colagerio Iacono; the successive telegrams and payments made thereunder; the disclosure of the identity of Feraci, his employment by the character witness whose surname begins with G and eliminating the G is spelled Iacono, at the address 1225 Chartres Street, are in my opinion enough to exclude every reasonable hypothesis of innocence, and amply justified the jury in reaching the determination which it did.

1046

Accordingly, I feel constrained to deny the motion and do deny it on behalf of the defendant Colagerio Iacono.

Mr. Edelstein: Exception.

1047

1048

Government's Exhibit 21

Western Union money order draft, (for form see Government's Exhibit 86) payable to Cola Gentile or order in the sum of \$1400.00. Telegraphed from New Orleans, Louisiana, by Jerry Fradella. Endorsed on back by "Cola Gentile" and "J. Mazer", money order agent. Marked "Paid April 16, 1937". (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

1049

Government's Exhibit 25

Micro-Conversation

Hotel Willard—Room 66

May 6, 1937

(1—Pete (Esch)

(2—Mike

(3—Dick

1050

7:05 P. M.

2—Oh, hello Dick, come in.

3—I'm sick, I feel lousy, I'm drunk.

2—I'll give you some coffee.

3—I was downtown.

3—I was asked if I could prove that everything was all right and I said Yes. You boys can get anything you want—you're all right.

You made a mistake when you went to Joe King. I could bring 4 cans of that stuff without a nickel.

1—What did Louis have to say?

Government's Exhibit 25

105

3—Louis is not your friend—you know what he said, he can't trust that man (Mike). He said "Dickie, they don't trust them yet." But I know you are all right—I'm satisfied.

1—How about Jimmy the Blond?

3—Jimmy the Blond and Luciano are like that (apparently made a sign with his fingers.)

3—I'm sticking to you Mike. You're my good friend. I talked to Jerry and said to him if they are wrong, I'm wrong. He says the guy is wrong. I said to him Mike is all right, my wife made a scarf for Mike. I want Mike's friendship. How can a man be wrong if the man is doing business for 2 years. I said they could do business with anybody they want. I said to Jerry Bruno, they are right.

1—I don't give a damn if I don't ever meet Jerry Bruno.

3—One thing I found out is that Louis said he don't trust this guy yet.

1—You can see his point—he knocks me to you. If I were wrong would he have sold me stuff. I bought a pound of mud from Luciano, I bought 2 ounces of H from Louis for \$110 again \$110, again \$55.

3—You're a sucker.

1—I had to have it, then he shorts me, so shouldn't he knock me downtown.

3—We got to straighten him out.

1—I see why he puts that story out—he wants the dough. He brought me a sample of it—it's good, if that's the May & Baker stuff I want it.

3—Today they took the plant away.

1—Louis is coming up now.

NY 054

Government's Exhibit 25

3—You can save \$225—that's money.

1—You're telling me.

.

1—The other night Mike mentioned Jerry Bruno and Louis said don't mention that name. Dickie tell me

who is the boss, Louis, Luciano or Jimmy the Blond.

3—None of them—Jimmy the Blond is their friend.

Joe Petrucci is the boss, an Italian fellow.

.

NY 055

3—Luciano is nobody to me.

1—Louis told me if he hasn't any stuff, nobody is got it.

3—It's a lot of s— he don't want you to go downtown.

1—He offered it at first for 22 then raised it to 23.

3—If you want to do business, well then go ahead. You wouldn't get anything from downtown until Mike straightens things out.

1—Dickie listen what we save on this we can put in the business.

.

NY 056

1—Let me tell you something else, a month ago Louis went down to the Cornish Hotel by himself and delivers to me 2 pieces and lays out \$1100 on the bed. Now if I'd be wrong, you think he would do that.

3—He said be careful of them two guys.

1—I could give them recommendations from all over town.

.

3—They changed the plants this morning.

1—If I was wrong I'd say clip them for the damn stuff.

.

1—Louis said to me if I don't have enough money to go to Canada and bring 400 pieces, he'd give me the money.

Government's Exhibit 25

105

3—He is full of bunk.

.

3—If I was a—I could get \$500, merchandise.

1—If I was a—I could tell you to go and snatch it, wouldn't I?

3—Oh, forget it.

1—Is Mike in wrong with the Jewish mob?

3—Well they talk about him.

.

1—Is Luciano long connected with Louis?

3—Luciano is only 2 weeks with Louis.

.

3—Have you ever been interested in powered gum?

1—Yes.

3—It means a lot if Mike is straightened out.

3—Its pretty high today.

1—When I first bought the gum—I told them how much it would throw—90 when its cooked up. Luciano knows gum.

3—Yes he does.

.

Micro-Conversation

Hotel Willard—Room 66

May 6, 1937

8:30 P. M.

(1—Pete (Esch)

(2—Mike

(3—Dick

(4—Louis

Pete—Sit down, Louis, you want a drink.

Louis—When did you talk to Jerry?

Dick—4:30.

.

1060

Government's Exhibit 25

At this time Louis makes an outgoing call from Room 65

(Louis to
(Jimmy the
(Blond

Outgoing call 8:32 P. M.

In (Louis)—Canal 6-8775.

Out—Hello.

1061

In—Hello, Jimmy the Blond; please, this is Louis.

Out—Just a minute.

Out—Hello, Louis.

In—Hello, Jimmy—you know what I heard about Romaeo,
he marked the kid lousy.

Out—When are you coming to-night, there is a lot of
shortage, 4 ounces short on one of the packages.

Come down we will weight the stuff, I got a scale.

In—All right, I'll be down later.

(Micro-Conversation resumed)

1062

Pete—If he could straighten things out, I could come
downtown.

Louis—I am going to see Romaeo to-night.

Pete—Mike get this thing fixed up.

Dick—He'll be fixed up.

Pete—By to-morrow I'll have the balance. I got \$400
to-day.

Louis—That's all right.

Pete—As soon as I hear from New Jersey, I'll be
sitting pretty.

Louis—When will you expect to take it.

Pete—I'll know to-morrow.

Government's Exhibit 25

106

Louis—Do you want I should bring it to-morrow?

Pete—It's up to you.

Louis—If I'll bring it up to-morrow, will you have the money? They need money, we got $\frac{1}{2}$ kilo—100% each.

Pete—When is the gum due.

Louis—Any day, we are tied up with H. I like to be business with you quietly.

Pete—If they don't like me I don't want to deal with them. I'd like to pick up the H if it is right.

Louis—It will be \$32.00. How do you like the C?

106

Pete—Its 100%. Canadian stuff all right.

Louis—Yes, sir.

.

Louis—Its guaranteed that you want the stuff?

Pete—Oh sure.

Louis—Do you want to give me a deposit, \$200.

Pete—Wait till to-morrow.

Louis—All right.

.

Louis—Say Doc, let's change rings—for a present.

Pete—No, that's my school ring.

106

Louis—Watches?

Pete—It's made in New York, it's my mother's.

Louis—Can I open the watch?

Pete—Sure.

Louis—15 jewels, 14 karats, solid gold. I like it because it's fancy.

Pete—You want it?

Louis—Oh no, I just want to change with you. You wear mine and I wear yours.

Pete—All right, you got a real watch. You want to trade?

Government's Exhibit 25

066

Louis—Okeh.

Pete—If you change your mind, we'll change back.

. . .

Pete—Hey Louis, tell me something what does Romaeo mean, it's a pet name?

Louis—Yes. I don't even know the—bum.

. . .

Pete—Why didn't you bring the girl last night?

Louis—Oh, I didn't want to chase you guys out.

067

Pete—Oh that would have been all right, I left the keys downstairs for you.

. . .

Pete—Louis, listen, if I get back down home will you ship me stuff?

Louis—Yes, sir.

Pete—I don't want nobody to give me a double cross.

Louis—That's right. When you wire me for stuff, you send the money first. Go to a quiet place. You know why Mike is hot—he got three pinches and always got out, that's why he's marked wrong. I won't trust Mike.

068

Pete—Well I heard about him. I come from good people, I could get references from good people so why should I mix up with this crap.

Louis—Sure.

Pete—Louis, haven't I been on the up and up with you?

Louis—Yes, that's right.

Pete—I don't need the people downtown.

Louis—That's right.

Pete—My money is good United States currency.

Louis—That's right.

Pete—What do I care about Montana.

Louis—That's right.

Government's Exhibit 25

1069

Pete—Let him get the whole thing straightened out, then I'll talk to him.

Louis—That's right.

Pete—Take Luciano, he's quiet and I like him.

Louis—He's a real man. The people who associate with me are nice people, no bull s—about them.

.

Pete—I was so damn mad Wednesday, I wanted to check out.

Louis—I don't blame you—but get in touch with me.

Pete—Where can I reach you—I'll check out in a few days.

Louis—Don't give this to God (Louis apparently gives something to Pete).

Pete—You trust me.

Louis—Yes.

Pete—(Reads) Circle 7-9352.

Louis—No Jack, remember, call me Louis—that's all.

Pete—Just ask for Louis!

Louis—Yes between 4 and 5 o'clock.

.

Louis—Not a man in his business should see your car.

Pete—I know it.

Louis—When you call me up, I'll tell you where you can put it in for \$8.00 a month. Don't get no headaches.

Pete—I got plenty of headaches, when I come back I won't bring the car.

Louis—That's right.

.

Pete—This is the first time in my life that I talked business when there would be two people inside. I am respected here in the hotel, how long will I be respected if he brings in bums.

1070

1071

Government's Exhibit 25

1072

Louis—That's right.

Pete—I didn't know whether the City of Feds grabbed him—he left the car—and they thought I'd go to the car. The car is not listed under Swanson, I'll tell you that.

At this time an incoming call was made to Room 65

(Mike to
(Pete (Esch)

1073

Incoming Call to Room 65 Willard Hotel 9:50 P. M.

In (Pete)—Hello.

Out (Mike)—Hello, Doc.

In—Yes.

Out—Doc—this Mike. Is Louis waiting, stall off for a day or two, we'll be up soon.

(Micro-Conversation resumed)

1074

Louis—Who called, Mike?

Pete—Yes. Louis, don't talk any business while he is around.

Louis—Sure. The best thing for you is to check out otherwise I'll never come up here.

Pete—Will you do me a favor? Tell the people downtown, I don't even want to hear about them.

Louis—O'keh.

Pete—I thought he (Mike) would be of some good to me—but he isn't worth a s—, of course I met you fellows through him, that's all.

Louis—That's right.

Government's Exhibit 25

107

Pete—What will be the price of the next gum?

Louis—I don't know—its all according to the market—its very scarce now. I'll give you a break, don't worry.

At this time 10:50 P. M. Louis left Pete's apartment and Mike and Dick entered.

Micro-conversation resumed Pete (Esch), Mike and Dick present.

Micro-conversation resumed 10:50 P. M.

107

(1. Pette (Esch)

(2. Mike

(3. Dick

Pete—In Chicago, they are making Chinese heroin pink pills, did you ever see them?

Dick—No.

Mike—Yes.

Mike—Did you ever hear of Yen Shee babies?

107

Dick—No.

Pete—Cut down on your drinking, Dick.

Mike—We can get the deal through Dick and save money.

Dick—I am satisfied to make a few dollars Mike, you treated me like a brother.

Mike—Dick will get the goods and we will save money and give him something.

Dick—You want to go downtown and get the stuff and bring it. To-morrow is all right.

Mike—When you go downtown, look at the can inside, see that the seal is across the bag, fell the bags.

Government's Exhibit 25

1078 Dick—Should I bring two cans?

Mike—No.

Pete—The only thing is that you should feel the bags—
they shouldn't be too damp.

Mike—Did Montana lose the stuff?

Dick—Jerry is got it. Montana is got 25 percent.

Mike—Then I don't get anything.

At this time 11:15 P. M. Dick makes an outgoing call from Room 65 Willard Hotel to the La Salla restaurant asking for Jerry.

Outgoing Call 11:15 P. M. Room 65 Dick to Jerry

In (Dick)—Drydock 4-6753.

Out (Man)—Hello?

In—Hello? La Salla restaurant?

Out—Yes.

In—Is Jerry there on Broome St., this is Dickie.

Out—No. Wait awhile, I'll send somebody to call him.
(two minutes elapsed)

1080 Out—(other man)—Hello?

In—Hello, Jerry?

Out—Yes.

In—This is Dickie. (Remainder of conversation in Italian).

Pete—Say Dick, why don't you introduce me to Jerry Bruno?

Dick—If you stay here long enough I'll introduce you to this man.

Mike—He is very reserved, very few people get to meet him.

Pete—I'll tell him to straighten Mike out.

Government's Exhibit 25

At this time 11:32 P. M. (Pete, Mike and Dick) leave the apartment for the street.

.

BENJAMIN GROFF,
BENJAMIN GROFF, *Narcotic Agent.*

—••—

Government's Exhibit 50

Typewritten application for Western Union money order, (for form see Government's Exhibit 120), dated at New Orleans, La., September 8, 1936, made by J. Fradella, 915 Decatur Street, directing payment of \$1000.00 to Jimmy Parlapiano, 90 Elizabeth Street, New York, N. Y., and containing the message: "Call you 1 A. M." (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

—••—

Government's Exhibit 51

Typewritten application for Western Union money order, (for form see Government's Exhibit 120), dated at New Orleans, La., August 18, 1936, made by Jerry Fradella, 915 Decatur Street, directing payment of \$2000.00 to Jimmy Parlapiano, 90 Elizabeth Street, New York, N. Y. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

—••—

1084

Government's Exhibit 53

1085

Typewritten application for Western Union money order, (for form see Government's Exhibit 120), dated at New Orleans, La., February 17, 1937, made by Jerry Fradella, 915 Decatur Street, directing payment of \$1000.00 to Cola Gentile, 90 Elizabeth Street, New York, N. Y., and containing the message "SCUSA RITARDO". (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

Government's Exhibit 54

1086

Typewritten application for Western Union money order, (for form see Government's Exhibit 120), dated at New Orleans, La., April 15, 1937, made by Jerry Fradella, 915 Decatur Street, directing payment of \$1400.00 to Cola Gentile, 90 Elizabeth Street, New York, N. Y. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

Government's Exhibit 57

Western Union money order draft (for form see Government's Exhibit 86) dated at New York, February 17, 1937, payable to Cola Gentile or order in the sum of \$1000.00. Telegraphed from New Orleans, La., by Jerry Fradella. Endorsed on back by "Cola Gentile", "Tony Maurio", "J. Blangiardo and V. Palmieri". (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

Government's Exhibit 85

Western Union money order draft (for form see Government's Exhibit 86) dated at New York, April 30, 1937, payable to Nicola Gentile in the sum of \$600.00. Telegraphed from New Orleans, La., by Nino Lima. Endorsed on back by "Nicola Gentile", "Joe Pinto", "J. Blangiardo" and "V. Palmieri". (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

190

Government's Exhibit 86

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 88

191

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 90

Photoprint of this exhibit follows immediately hereafter.

192

No. E879670

WESTERN UNION MONEY ORDER

Not Cashable

at Point of Issue Pay to GALOGERO IACHENO.

Issued at 38 GEORGE ST., N. Y.

MARCH 31 1936

THE SUM OF EIGHT HUNDRED DOLLARS.

-----DOLLARS-----

Account telegraphed from NEW ORLEANS, LA MARCH 31ST

BY 3AM.

TO THE WESTERN UNION MONEY ORDER

PAYABLE TO THE ORDER OF

THE CHASE NATIONAL BANK

OF THE CITY OF NEW YORK

GULF DIV

NEW ORLEANS

LA MARCH 31ST

1936

Blangiardo & Palmieri

Blangiardo & Palmieri

J. Blangiardo

INTEREST AND DIVIDENDS
GULF DIV
PAID TO ORDER OF
THE NATIONAL CITY BANK
OF NEW YORK

[illegible][illegible]

balog to Jarkono

PAY TO THE ORDER OF 18
Manufacturers Trust Company
Blangiardo and Palmeri

१८७७

RECEIVED PAYMENT

JUN 9 1968

TORONTO

STANDARD BANK OF CANADA

100 QUEEN ST. W.

TORONTO, ONT. M5H 2R7

Handwritten: 18 JAN 21 1936
 THE CHASE NATIONAL BANK
 150 N. LAKE ST. CHICAGO, ILL.
 150 N. LAKE ST. CHICAGO, ILL.

Handwritten: 18 JAN 21 1936
 THE CHASE NATIONAL BANK
 150 N. LAKE ST. CHICAGO, ILL.
 150 N. LAKE ST. CHICAGO, ILL.

No. E855287 **Western Union Telegraph Company** **MET**

Pay to the order of **Colosero Iacono** **70517D** **JAN 21 1936**

THE SUM OF **ONE HUNDRED AND NO/100** **DOLLARS** **OR ORDER** **\$1,000.00**

TO THE WESTERN UNION TELEGRAPH COMPANY **CHICAGO, ILL.** **18 JAN 21 1936**

THE CHASE NATIONAL BANK **OF THE CITY OF CHICAGO** **ILL.** **18 JAN 21 1936**

THIS CHECK IS NOT VALID UNLESS IT IS COUNTERSIGNED BY THE TREASURER OF THE CHASE NATIONAL BANK

Handwritten: **Colosero Iacono** **70517D** **JAN 21 1936**

Calogro
Blangiardo & Palmieri
Handwritten: **Blangiardo & Palmieri**

ENTERED
JAN 27 1936

RECEIVED PAYMENT
THE NATIONAL CITY BANK
CHICAGO, ILL.
18 JAN 21 1936

PAY TO THE ORDER OF
THE NATIONAL CITY BANK
CHICAGO, ILL.
18 JAN 21 1936

BR

Government's Exhibit 95

—Western Union money order draft (for form see Government's Exhibit 86) dated at New York, December 17, 1936, payable to Mrs. J. Attardi in the sum of \$100.00. Telegraphed from Houston, Texas by A. Attardi. Endorsed on the back by "Josephine Attardi", and "I. E. Rose" money order agent at the Western Union Station which paid this draft. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

1090
1096**Government's Exhibit 108**

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 1131091
1097

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 120

Photoprint of the front of this exhibit follows immediately hereafter. The printed matter on the back of this exhibit is the same as that on the reverse of all applications for money orders, and is as follows:

1092
1098

GOVERNMENT'S EXHIBIT No. 108

Garono Bologna

| | |
|-----------|---------|
| AMOUNT | 1750.00 |
| CASH | 5.10 |
| TELEPHONE | 9.00 |
| TOTAL | 14.10 |

WESTERN UNION MONEY ORDER

NEW ORLEANS, LA. April 3 1937

1750.00

APR 3 - 1937

PAY TO Mr. J. H. Smith
1234 5th St.
New York City, N.Y.

Amount \$1750.00

(A message to be delivered with the money, with list of bills sent, and some separate telegrams. See list of bills on the following lines)

Messages to be delivered with the money:

ENTERED
APR 8 - 1937
GULF
U.S. 11

Positive evidence of personal identity is NOT to be required from the Payee, and I am not to be required to deliver the Telegram Company to pay for my money in this order at my risk to such person who will deliver to be the above named Payee. UNTIL the above order is signed.

POSITIVE PERSONAL IDENTIFICATION REQUIRED

I declare that the above named person shall be required to furnish positive evidence of personal identity before payment is made.

Signature

Sender's Address
in full

1227 Christie St.

Information for test question
for identifying payee

IN CASE OF FOREIGN MONEY ORDERS: Pay United States currency

Pay in Local Currency ☐

(REVERSE SIDE OF APPLICATION FOR
MONEY ORDERS)

Money Orders Are Subject to the Following Conditions:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer. 1104

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad. 1105

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the

102

Government's Exhibit 120

sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

103

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

All Messages Included in Money Orders Are Subject to the Following Terms:

104

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars; nor for mistakes or delays in the transmission or

delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued*; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one per cent of the amount by which such valuation shall exceed five thousand dollars.

1106

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

1107

4. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

5. The transferring of the money and the transmission of the message together constitute one transaction and the cancelation by either the sender or the company of the money order cancels also any obligation on the part of the company to deliver the message. The message will

1108

Government's Exhibit 120

be delivered to the payee of the money order only as and when the money is paid.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

1109

7. It is agreed that in any action by the company to recover the tolls for any message or messages the prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. No employee of the company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY
Incorporated
R. B. WHITE, President.

1110

Government's Exhibit 121-A

Written application for Western Union money order (for form see Government's Exhibit 120), dated at New Orleans, La., March 5, 1937, made by Tony Spataro, 1303 Chartres Street, directing payment of \$1500.00 to Nicola Gentile, 90 Elizabeth Street, New York City. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

Government's Exhibit 122

Written application for Western Union money order (for form see Government's Exhibit 120), dated at New Orleans, La., March 19, 1937, made by Tony Spataro, 1303 Chartres Street, directing payment in the sum of \$1500.00 to Frank Fiorica, 96 Elizabeth Street, New York City. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

114

Government's Exhibit 123

Written application for Western Union money order (for form see Government's Exhibit 120), dated at New Orleans, La., March 22, 1937, made by Nino Conti, 1303 Chartres Street, directing payment of \$1500 to Tony Conti, 96 Elizabeth Street, New York City. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

115

Government's Exhibit 126

Western Union money order draft (for form see Government's Exhibit 86), dated at New York, April 18, 1937, payable to Anthony Lima, in the sum of \$10.00. Telegraphed by Rose Secontrino from New Orleans, La., and endorsed on the back by "Anthony Lima". (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

116

Government's Exhibit 137

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 138

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 139

Photoprint of this exhibit follows immediately hereafter.

1120

Government's Exhibit 140

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 150-A

1121

Photoprint of this exhibit follows immediately hereafter.

Government's Exhibit 150-E

Photoprint of this exhibit follows immediately hereafter.

1122

No. E828944

Western Union Money Order

31157

Antonia Iacono
at Point of Issue Pay to

COLOGNO IACONO

Issued at
18 DELANCEY ST. & E.
CITY ASSURE

DEC 12/35

THE SUM OF FIVE HUNDRED

NO. 100

DOLLARS

DEC 12 1935

OR ORDER

50 NEW ORLEANS LA

DATE

ANTONIA IACONO

TO THE WESTERN UNION TELEGRAPH COMPANY

PAID BY THE COMPANY

THE WESTERN UNION TELEGRAPH COMPANY

Ed Huntington

TREASURER

138

GULF

RECEIVED
DECEMBER 12 1935
NEW YORK
TELEGRAPH
CO.
PAID TO THE ORDER OF
ANTONIA IACONO
\$500.00

Cologno Iacono
Blungiarde & Palmieri
Blungiarde
ENTERED
DEC 23 1935

311236

No F828739

WESTERN UNION MONEY ORDER

MET

When Cashiered

ISSUED AT 100 NASSAU ST. N. Y.

NOV 5 1935

19

at Point of Issue PAY TO COLOGERO IACONO

OR ORDER

THE SUM OF FIVE HUNDRED AND 00/100

DOLLARS

00/100

AMOUNT TELEGRAPHED FROM

NOV 11 1935

19 35

ANTHONY IACONO

TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE AT

THE CHASE NATIONAL BANK

OF THE CITY OF NEW YORK

NOV 11 1935

Anthony Iacono

THE WESTERN UNION TELEGRAPH COMPANY

Blountington

TREASURER

RECEIVED

NOV 11 1935
THE NATIONAL CITY BANK
NEW YORK
RECEIVED
NOV 11 1935
THE NATIONAL CITY BANK
NEW YORK
RECEIVED
NOV 11 1935
THE NATIONAL CITY BANK
NEW YORK

Cologero Iacono
Blangiardo & Palmieri
Blangiardo

NOV 11 1935

11:51:25A Dec 28 1961

| | |
|---|----|
| 1 | 13 |
| 2 | 14 |
| 3 | 15 |
| 4 | 16 |

| | |
|---|----|
| 5 | 17 |
| 6 | 18 |
| 7 | 19 |
| 8 | 20 |

WESTERN UNION MONEY ORDER

NEW ORLEANS, LA

Pay to the order of Mr. New York

NEW ORLEANS, LA

100.00

101.87

100.98

100.98

100.98

100.98

100.98

100.98

100.98

100.98

100.98

100.98

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100.98

100.98

100.98

100.98

100.98

100.98

100.98

Message to be delivered with this money:

DEC 28 1961

Positive evidence of arrest (number 1007) is in
possession of the Police, and I understand that the
Police are trying to find out who is in the
order at my side to make payment at the same time
as the above money order. (1007) and the following is
signed:

POSITIVE PERSONAL IDENTIFICATION REQUIRED
I declare that the above named person shall be required to produce
positive evidence of personal identity before payment is made.

Signature _____

Information for last question
for identifying payee

IN CASE OF REMITTANCE MONEY ORDER: Pay United States Dollars ☐ Pay in Local Currency ☐

Frank Buchanan
1309 Charleston St

Sender's Address
for Return
Sender's Telephone
Number

1935 OCT 5 AM 12 54

151430

| | |
|------|----------|
| NO. | 169 |
| DATE | 10/12/35 |
| TIME | 11:12 |
| BY | 11:12 |

WESTERN UNION MONEY ORDER

| | |
|---------------|--------|
| AMOUNT | 500.00 |
| PAID TO ORDER | 7.15 |
| PAID TO ORDER | 97.94 |
| PAID TO ORDER | 502.82 |

NEW ORLEANS, LA

NEW ORLEANS, LA NOV 5 1935

PAY TO

Mr. E. C. Clayton, Jr.

Address

599 E. Livingston St.

City

New York City - N.Y.

Amount Five hundred

500.00

(A message, do to, delivered with the money, with pay & bank name and serial a separate telegram. It may be written on the following lines)

Message to be delivered with the money:

INTER
NOV 11 1935
GULF

Positive evidence of personal identity is NOT to be required from the Payee, and I authorize and direct the Telegram Company to pay the sum named in this order at my risk to such person as he may claim to be the above named Payee, UNLESS the following is signed.

POSITIVE PERSONAL IDENTIFICATION REQUESTED
I declare that the above named person shall be required to produce positive evidence of personal identity before payment is made.

Sender's Address

1227 Charlevoix

for delivery

Sender's Telephone

Number

Information for test of action for identifying payee

IN CASE OF FOREIGN MONEY ORDERS: Pay United States Dollars ☐ Pay in Local Currency ☐

①

Handwritten signature

DATE
CITY
STATE

ENTERED

Handwritten signature

DATE
CITY
STATE

ENTERED

DATE
CITY
STATE

ENTERED

WESTERN UNION
MONEY ORDER

RECEIVED

1914

APR 2 10 00 AM

Government's Exhibit 150-F

Written application for Western Union money order (for form see Government's Exhibit 86), dated at New Orleans, La., June 20, 1937, made by Anthony Lima, 1301 Chartres Street, directing payment in the sum of \$1300 to Cola Gentile, 90 Elizabeth Street, New York City. (Printing of exhibit omitted pursuant to stipulation printed at pages 392-3.)

Government's Exhibit 154**THE PRESIDENT OF THE UNITED STATES
OF AMERICA**

To The General Manager,
Western Union Telegraph Company,
Dallas, Texas.

Greeting:

WE COMMAND YOU that all and singular business and excuses being laid aside you and each of you appear and attend before the Judge of the District Court of the United States for the Southern District of New York, at a District Court to be held in Court Room No. 318, in the United States Court House Building in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, forthwith to testify and give evidence in a certain cause now pending undetermined in the said District Court of the United

126

Government's Exhibit 154

States for the Southern District of New York, between the United States of America, Plaintiff, and Catherine Allen, et al., Defendants, on the part of the United States, and not depart the Court without leave thereof or of the District Attorney, and that you bring with you and produce at the time and place aforesaid the following:

127

Originals of all Telegrams, Money Order Remittances, and Telephone Charges, as well as all other memoranda pertaining thereto, sent by or to the persons as per list attached, for the period commencing September 1, 1935, up-to-date.

and all other deeds, evidence and writings, which you have in your custody or power concerning the premises. And for failure to attend and produce said documents, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto and to other penalties of the Law.

128

WITNESS THE HONORABLE JOHN C. KNOX, Judge of the District Court of the United State for the Southern District of New York, at the Borough of Manhattan, City of New York, the 26th day of October, 1937.

CHARLES WEISER,
Clerk.

LAMAR HARDY,

*United States Attorney for the
Southern District of New York.*

NOTE:—Report at Room 413. In order to secure your witness fees and mileage, it is necessary that you retain

this subpoena and present same at the United States Attorney's Office, Room 413, upon each day on which you attend Court as a witness.

Assistant Mr. Martin Room 401-C

PLEASE NOTE: It will not be necessary for you to attend in person at this time. Please forward documents by registered mail.

1130

- A. Vincent Geniluomo
- B. Charlie Cessasi
- 1. Allen, Catherine
- 2. Angelica, Angelica B.; alias D. Angelica, alias Biaggio Angelica
- 3. Abbonasion, D.
- 4. Attanasio, D.
- 5. Attanasio, Leon
- 6. Attardi, Alphonso; alias Al, alias I. L. Attroad
- 7. Attardi, Josephine; alias Josie, alias G. Attroad
- 8. Biagi, Angelo
- 9. Boysa, Sladyslaus; alias Walter
- 10. Caputo, Francois; alias Francois Capporio
- 11. Caputo, Gennaro; alias John Capporio
- 12. Carreria, Vincent; alias Vincent Carroll, alias Jimmy the Blond
- 13. Carussotto, Josephine; alias Guisseppina Carusotto
- 14. Carussotto, Mary
- 15. Cavaretta, E.; alias Isidor Cavaretta; alias Isidor Caverallo
- 16. Cellentono, Mike; alias Celli
- 17. Cicciofera, Frank
- 18. Colognia, Angelina

11311

In 132

Government's Exhibit 154

19. Cologna, Louis
20. Conti, Nino
21. Conti, Tony
22. DiMaggio, Jimmy; alias Vincenzo Dimaggio
23. DiMaggio, Josephine
24. DiMarzo, Dominick; alias Dick La Rose
25. Doe, John; alias Pete the bug
26. Doe, John, 2nd; alias Charlie
27. Doe, John, 3rd; alias Mickey
28. Doe, John, 4th; alias Joe Pinto
29. Doe, John, 5th; alias Joe Russo
30. Doe, John, 6th; alias Tony Marino
31. Doe, John, 7th; alias Phil
32. Feraci, Jerry
33. Fiorica, Anthony
34. Fiorica, Frank
35. Fiorica, Nino
36. Fiorica, Tony
37. Fradella, Jerry
38. Gagliano, Joe
39. Gentile, Nicholas, alias Cola Gentile, alias Don Gentile, alias Nichola Gentile, alias Zio Cola
40. Giorica, Frank
41. Iacono, Colagerio
42. Ignaro, Lucien, alias Luciano
43. LaGaipa, Charles, alias Big Nose Charlie, alias Colagero LaGaipa
44. Lago, Jose, alias Joe
45. Liguorio, Ralph, alias Ralph
46. Lima, Anthony
47. Lima, Antoinette
48. Lima, Grace
49. Lima, Joe
50. Lima, Nino
51. Maceo, Sam

In 133

In 134

Government's Exhibit 154

1134

52. Macey, Joe
 53. Massa, Joe
 54. Mauro, Al; alias Montana; alias Romano; alias Scarface Al Capone
 55. Mauro, Luke
 56. Papa, Felix; alias Phil; alias McCarthy
 57. Pettruzzi, Joe; alias Joseph Nicholas Pettruzzi
 58. Phillips, Katherine
 59. Roe, Richard; alias Little Joey
 60. Roe, Richard, 2nd; alias Louis
 61. Ruppolo, Louis; alias Louis the bum
 62. Scarbetti, Daniel; alias Danny Spears, alias Daphy Murphy
 63. Scontrino, Mrs. A.
 64. Sgitcavich, Mike
 65. Simoncini, Augustine; alias LoPrimo
 66. Simoncini, Filipina; alias Filippina Simoncini; alias Fillie
 67. Spataro, Tony
 68. Vaccaro, Dominick; alias Mimi
 69. Vallone, Vincent
 70. Vencileoni, John; alias Little Johnny; alias Johnny the Frenchman
 71. Villini, J. D.
 72. Virzi, Anthony; alias Frank Cavito
 73. Virzi, Mrs. Anthony
 74. Visco, Dominick; alias Kelly
-

1134

1134

1-138

*Government's Exhibit 155***MARSHAL'S RETURN**

Received this Subpoena at Dallas, Texas, on Oct. 30, 1937
and on Nov. 2, 1937 at Dallas, Texas I served the General
Manager of Western Union W. H. Schorder in person
and left him copy of Subpoena.

J. R. WRIGHT,**U. S. Marshal,****By E. R. Goss, Deputy.**

1-139

Marshal's Fee50¢

Travel28

Total78

Served 11-2-37

Marshal's Docket No. 62-494

1-140

Government's Exhibit 155**THE PRESIDENT OF THE UNITED STATES
OF AMERICA**

To Mr. Herbert T. Staub,
Legal Advisor,
Western Union Telegraph Co.,
60 Hudson Street,
New York, N. Y.

Greeting:

WE COMMAND YOU that all and singular business and

excuses being laid aside you and each of you appear and attend before the Judge of the District Court of the United States for the Southern District of New York, at a District Court to be held in Court Room No. 318, in the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, forthwith to testify and give evidence in a certain cause now pending undetermined in the said District Court of the United States for the Southern District of New York, between the United States of America, Plaintiff, and Catherine Allen, et al., Defendants, on the part of the United States, and not depart the Court without leave thereof or of the District Attorney, and that you bring with you and produce at the time and place aforesaid the following:

1142

1. Original of Western Union money order application, dated March 15, 1937, 12:49 P. M., from New Orleans, La., to Nicola Gentile, 90 Elizabeth Street, New York, N. Y., amount \$1500.00, transmitted by Tony Spataro, 1303 Chartres St., New Orleans, La.

1143

2. Original of Western Union money order dated March 19, 1937, amount \$1500, from New Orleans, La. to Frank Fiorica, 96 Elizabeth St., New York, N. Y., from Tony Spataro, 1303 Chartres St., New Orleans, La.

3. Original of Western Union money order dated March 22, 1937, from New Orleans, La., to Tony Conti, 96 Elizabeth St., New York City, amount \$1500.00, from Nino Conti, 1303 Chartres St., New Orleans, La.

4. Western Union Money Order application dated April 3, 1937 New Orleans, La., amount \$1,750.00, payable to Frank Fiorica, 96 Elizabeth St., New York City, from Nino Fiorica, 1227 Chartres St., New Orleans, La.

1144

Government's Exhibit 155

5. Original of Western Union money order dated July 16, 1937, at Houston, Texas, to Frank Fiorica, 96 Elizabeth St., New York City, amount \$1,200.00, 2119 McGowan St., Houston, Texas.

6. Original of Western Union money order, payable to Frank Fiorica, dated April 5, 1937, transmitted by Nino Fiorica and issued at No. 18 Delancey St. Station, a branch of the Western Union Telegraph Company, New York City.

1145

7. Original Western Union money order, dated March 20, 1937 payable to Frank Fiorica, amount \$1500.00, from Tony Spataro, and paid at No. 18 Delancey St. Station, New York City, a branch of the Western Union Telegraph Company.

8. Original Western Union money order, payable to Frank Fiorica, dated July 18, 1937, amount \$1200.00, from Tony Fiorica, Houston, Texas, payable at No. 18 Delancey St. Station, N. Y. C., a branch of the Western Union Telegram Company.

1146

9. Original of Western Union money order application dated June 19, 1937, at Houston, Texas, payable to Anthony Lima, 1301 Chartres St., New Orleans, La., for the sum of \$1300.00, transmitted by Isadore Cavarello, 1122 W. Bell St., Houston, Texas.

10. Original Western Union money order dated April 6, 1937, at Houston, Texas, payable to E. Cavaretta, 304 First Avenue, care of Cafe Dantes, New York City, for \$800.00, transmitted by B. Angelico, 321 W. Bell Street, Houston, Texas.

Government's Exhibit 155

114

11. Original of Western Union money order paid at 832 Broadway, New York City, dated April 7, 1937, to E. Cavaretta, in the amount of \$800.00, transmitted by B. Angelico, Houston, Texas.

12. Original Western Union money order application dated April 30, 1937, at New Orleans, La., to Mr. Nicola Gentile, 90 Elizabeth St., New York City, amount \$600.00, transmitted by Nino Lima of 2130 Bayou Road, New Orleans, La.

114

13. Original of Western Union money order application dated June 20, 1937, at New Orleans, La., to Cola Gentile, 90 Elizabeth St., New York, N. Y., in the amount of \$1300.00, transmitted by Anthony Lima, 1301 Chartres St., New Orleans, La.

14. Original Western Union money order paid at New Orleans, La., on June 20, 1937, to Anthony Lima for \$1300.00 transmitted by one Isadore Cavarello, 1122 W. Bell St., Houston, Texas. Number of this draft, S-765768.

15. Original of Western Union money order issued at 154 East 23rd Street, New York City, June 26, 1937, paid to Mary Carrosotto for \$800.00, telegraphed by Josie Attarde from Galveston, Texas.

114

16. Notice of arrival of money order to Mary Carrosotto, 339 E. 21st Street, New York, N. Y., with message attached.

17. Original of Western Union money order filed at Galveston, Texas, on June 26, 1937, payable to Mary Carrósotto, 339 E. 21st Street, New York City, in the amount of \$800.00—message to be delivered with the

1150

Government's Exhibit 155

money, the message being as follows: "Please money order to Jimmy DiMaggio—regards—

"By

"Alfonso, corrected to

"Josie Attarde

No. 3502 R $\frac{1}{2}$ Galveston, Texas"

1151

18. Original of Western Union message filed on June 27, 1937, at Galveston, Texas; to Vincenzo DiMaggio, 347 First Avenue, New York City, by Alfonso, Galveston, Texas.

19. Original of Western Union Money Order filed at Houston, Texas, on June 11, 1937, payable to Fillippina Simonecini of 120 Arthur Avenue, South Beach, Staten Island, New York, in the amount of \$200.00 by Augie of 2119 McGowan St., Houston, Texas.

1152

20. Original of Western Union money order issued to Ferry House, St. George, Staten Island, N. Y., June 12, 1937, to Fillippina Simonecini, in the amount of \$203.00 telegraphed by Augie from Houston, Texas.

21. Original of Western Union night letter dated June 11, 1937, filed at Houston, Texas, to Fillippina Simonecini, 120 Arthur Avenue, South Beach, Staten Island, N. Y., from Augie, 2119 McGowan Street, Houston, Texas.

22. Telegram filed on June 13, 1937, at the Pennsylvania Station, New York City, address to Mr. LoPrimo, 2002 Market Street, Galveston, Texas, signed "Fillie".

23. Original of route record showing delivery of above telegram by Messenger No. 12, and receipted for by D. A. Athanasion of 2002 Market St., Galveston, Texas.

Government's Exhibit 155

1153

24. Original of Western Union money order dated February 17, 1937, at New Orleans, La., payable to Cola Gentile, 90 Elizabeth St., New York City, amount \$1,000.00 by Jerry Fradella, 915 Decatur Street, New Orleans, La.

25. Original of Western Union money order dated April 15, 1937, at New Orleans, La., payable to Cola Gentile, 90 Elizabeth St., New York, N. Y., in the amount of \$1400.00, filed by Jerry Fradella, 915 Decatur St., New Orleans, La.

1154

26. Original of Western Union telegram dated June 26, 1937, at New Orleans, La., to Alfonso Attarde of 2002 Market St., Galveston, Texas, signed "Jim".

27. Original of route record form 87-C, Message No. 1387, dated June 27, 1937, at New York City for telegram accepted by J. DiMaggio.

28. Original of Western Union money order issued at No. 18 Delancey St., (Branch of Western Union Telegraph Company), New York, N. Y., dated February 17, 1937, payable to Cola Gentile, in the sum of \$1000.00, telegraphed by Jerry Fradella, from New Orleans, La.

1155

29. Original of Western Union money order issued at No. 18 Delancey St., (Branch of Western Union Telegraph Company) on March 5, 1937, payable to Nicola Gentile, in the sum of \$1500, amount telegraphed by Tony Spafaro from New Orleans, La.

30. Original, Western Union money order issued at No. 18 Delancey St., (Branch of Western Union Telegraph Company, New York, N. Y.) on April 15, 1937,

11156

Government's Exhibit 155

payable to Nicola Gentile, in the amount of \$1400, amount telegraphed by Jerry Fradella from New Orleans, La.

31. Original of Western Union money order issued at No. 18 Delancey St., (Branch of Western Union Telegraph Company, New York, N. Y.) dated April 30, 1937, payable to Nicola Gentile, in the amount of \$600, amount telegraphed by Nino Lima, New Orleans, La.

11157

32. Original of Western Union money order issued at the above named branch office of the Western Union Telegraph Company, i. e. No. 18 Delancey St., New York City, dated June 20, 1937, payable to Cola Gentile, in the sum of \$1300.00, amount telegraphed by Anthony Lima from New Orleans, La.

33. Western Union telegram filed on June 26, 1937 at No. 18 Delancey St., Branch of Western Union Telegraph Company, New York, N. Y., to Biagio Angelico, 321 W. Bell St., Houston, Texas, by Zio Cola, 90 Elizabeth St., New York, N. Y.

11158

34. Original of Western Union money order issued at No. 18 Delancey St., (Branch of Western Union Telegraph Company, New York, N. Y.), March 22, 1937, payable to Tony Conti, in the amount of \$1500.00, telegraphed by Nino Conti from New Orleans, La.

35. Original of Western Union money order application filed on April 29, 1937, at New Orleans, La., payable to Galogiro Iacono, 96 Elizabeth St., New York City; in the amount of \$1500, transmitted by Joe Gagliano, 1921 Hope St., New Orleans, La.

36. Original of Western Union money order issued at

No. 18 Delancey St., (Branch of Western Union Telegraph Company) New York, N. Y., on April 29, 1937, payable to Galogiro Iacono, in the amount of \$1500.00, amount telegraphed by Joe Gagliano from New Orleans, La.

37. Original of telegram filed at 143 E. 23rd St., New York City, on March 19, 1937, to Mr. B. Angellica, 321 W. Bell St., Houston, Texas, by Josie, c/o M. Carrusotto, 329 E. 21st St., New York City.

38. Original of Western Union money order application dated March 25, 1937, payable to Mary Carrusotto, 339 E. 21st Street, New York, N. Y., amount \$200.00, filed by Anthony Virzi, Houston, Texas.

116

39. Original of Western Union money order issued at 143 E. 23rd Street, New York, N. Y., dated March 19th or March 20th, 1937, payable to Mary Carrusotto, in the sum of \$200, amount telegraphed by Anthony Virzi from Houston, Texas.

40. Original of Western Union money order application filed at Houston, Texas, by Alfonso Attarde to Mrs. Josephine Attarde, Apartment 4, 329 E. 21st St., New York City, corrected to 339 E. 21st St., New York, N. Y., on April 19, 1937, amount \$1,017.20.

116

41. Original of Western Union money order issued at 143 E. 21st Street, New York, N. Y., on June 26th or June 27th, 1937, payable to Josephine Attarde, 339 E. 21st St., in the amount of \$1,017.20, amount telegraphed by Alfonso Attarde from Galveston, Texas.

42. Western Union telegram dated March 19, 1937, to Mr. B. Angellica, 321 West Bell St., Houston, Texas,

Government's Exhibit 155

1162

signed "Phill?", sender's address: Mr. Carrusotto, 339 E. 21st St., New York City.

43. Original of Western Union money order application dated May 4, 1937, at Houston, Texas, payable to A. Attardé, care of Carrusotto, corrected spelling—339 E. 21st St., Apartment 4, New York City, amount \$600, transmitted by E. Cavaretta, Houston, Texas.

1163

44. Original of Western Union money order issued at 143 East 23rd Street, New York City, on May 4th, or May 5th, 1937, possibly the 6th, payable to A. Attardi, in the sum of \$600, amount telegraphed by E. Cavaretta from Galveston, Texas.

45. Original of Western Union money order application dated May 19, 1937, at Houston, Texas, to G. Attroad, 339 E. 21st St., Apartment 4, New York City from I. L. Attroad, 1416 or 1417 Austin St., Apartment 4, Houston, Texas.

1164

46. Original Western Union money order application dated December 14, 1936 at Houston, Texas, payable to Mrs. Josephine Attardi, 339 East 21st St., Apartment 4, amount \$100.00, transmitted by Alfonso Attardi, Houston, Texas.

47. Original Western Union money order issued at 145 East 23rd Street, dated December 14, 1936, payable to Mrs. Josephine Attardi, in the sum of \$100.00, telegraphed by Alfonso Attardi, from Houston, Texas.

48. Original Western Union money order application dated December 17, 1936 at Houston, Texas, to Mrs. J. Attardi, 339 E. 21st Street, Apartment 4, New York City,

amount \$100.00 transmitted by A. Attardi, 2119 McGowan Street, Houston, Texas.

49. Original of Western Union money order issued at 146 East 23rd Street, New York, N. Y., December 17, 1936, payable to Mrs. J. Attardi, amount \$100 telegraphed by A. Attardi from Houston, Texas.

In complying with this subpoena it is requested that you also furnish the route records or other identification such as Form 87-C, showing the number of the messenger delivering the telegram and the signature of the recipient of said telegram.

1166

and all other deeds, evidence and writings, which you have in your custody or power concerning the premises. And for failure to attend and produce said documents, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto and to other penalties of the Law.

WITNESS THE HONORABLE JOHN C. KNOX, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, the 14th day of October, 1937.

1167

CHARLES WEISER,

Clerk.

LAMAR HARDY,

United States Attorney for the
Southern District of New York.

NOTE:—Report at Room 413. In order to secure your witness fees and mileage, it is necessary that you retain

11 1168

Government's Exhibit 155

this subpoena and present same at the United States Attorney's Office, Room 413, upon each day on which you attend Court as a witness.

See Assistant United States Attorney Room 401
Joseph P. Martin

11 1169

I HEREBY CERTIFY, That on the 18th day of Oct., 1937, at the City of New York, in my district, I personally served the within SUBPOENA DUCES TECUM upon the within-named Herbert T. Staub, Western Union Tel. Co., No. 60 Hudson St., N. Y. C. by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

JOHN J. KELLY,,
United States Marshal,
Southern District of New York.

Dated: Oct. 18th, 1937.

11 1170

RECEIVED ORIGINAL

A. M. 9:47 OCT 16, 1937

U. S. MARSHAL

New York, N. Y.

Defendants' Exhibit F

IT IS STIPULATED AND AGREED by and between counsel for the United States Government and Jerry Feraci that if Francis T. Giacona was called as a witness, he would testify that he is secretary and treasurer of the Southern Wine Mfg. Co. Inc., of No. 1225 Chartres Street, New Orleans, La., and that his company has employed Jerry Feraci as a salesman and representative since August, 1936 continuously to the present date and that he received each week by check a salary of Twenty-five (\$25.00) Dollars, and that he was found to be a steady worker. 117

Dated, New York, N. Y., May 25, 1938.

JAMES E. FREEHILL,
Atty. for Jerry Feraci.

Stipulation as to Printing of Exhibits

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Appellee,

—against—

DON ALPHONSO, et al.,
Defendants,

COLAGERO IACONO and
JERRY BRUNO,
Defendants-Appellants.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the following exhibits admitted into evidence consist of packages of narcotics:

1B, 4, 5A, 6A, 7A, 9, 9A, 11, 12, 13, 29, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and the aforesaid exhibits may be omitted from the record herein, and need not be produced by the United States Attorney at the time of the argument of this appeal before the Circuit Court of Appeals for the Second Circuit.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the list of exhibits which follow, admitted into evidence in this case, may be omitted from the record by consent, and may be produced and submitted to the Circuit Court of Appeals for the Second Circuit upon the argument of

Stipulation as to Printing of Exhibits

1177

the appeal herein by any of the parties hereto; with the same force and effect as though set forth in full in the record on appeal herein.

Government's Exhibits 2, 3, 15, 16, 17, 18, 20, 21, 23, 24, 26, 27, 28, 30, 31, 32, 33, 34, 35A, 35B, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 62, 81, 91, 93, 94, 95, 99, 102, 104A, 105A, 105B, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 130A, 131, 132, 133, 134, 135, 136, 141, 142, 145, 146, 147, 148, 149A, 150F, 150C, 150D, 152B, 161, 163, 165, 166, 167, 168, 57, 85, 121A, 122, 123, 126;

1178

Defendants' Exhibits B, C, D, E, G, H, J, K, L, N, P, S, T, U, X, EE, FF, GG.

Dated, New York, N. Y., March 30th, 1939.

JOHN T. CAHILL,

*United States Attorney for the
Southern District of New York,
Attorney for Appellee.*

SALVATORE J. IANNUCCI,

*Attorney for Appellant,
COLAGEBIO IACONO.*

1179

HERBERT ZELENKO,

*Attorney for Appellant,
JERRY BRUNO.*

1180

Stipulation and Order Settling Bill of Exceptions

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—against—

1181

DON ALPHONSO, et al., COLAGERIO
IACONO and JERRY BRUNO,
Defendants.

IT IS HEREBY STIPULATED AND AGREED that the foregoing contains all the testimony and exceptions made at the trial of this case and that the same may be settled and ordered on file as the bill of exceptions herein.

1182

Dated, New York, N. Y., March 30th, 1939.

JOHN T. CAHILL,

*United States Attorney for the
Southern District of New York,
Attorney for Appellee.*

SALVATORE J. IANNUCCI,

*Attorney for Appellant,
COLAGERIO IACONO.*

HERBERT ZELENKO,

*Attorney for Appellant,
JERRY BRUNO.*

Notice of Appeal of Jerry Bruno and Grounds of Appeal 118

Upon the foregoing stipulation, it is ordered that the foregoing may be settled and ordered on file as the bill of exceptions herein.

Dated, New York, N. Y., March 30th, 1939.

.....
U. S. D. J.

118

Notice of Appeal of Jerry Bruno and Grounds of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 101-276

Notice of Appeal Pursuant to Rule III

118

UNITED STATES OF AMERICA,

—against—

**DON ALPHONSO, et al.,
Defendants.**

**Name and Address of Appellant: Jerry Bruno, 807
Riverside Drive, New York City.**

**Name and Address of Appellant's Attorney: Henry A.
Drescher, 570—7th Avenue, New York City.**

1186 Notice of Appeal of Jerry Bruno and Grounds of Appeal

Offense: Violation of Section 88, Title 18, U. S. Code.

Date of Judgment: June 2, 1938.

Brief Description of Judgment and Sentence:

On the 2nd day of June, 1938, the defendant, Jerry Bruno, was found guilty by a jury on the indictment, and on the 2nd day of June, 1938 was sentenced to two years and fined the sum of \$5,000, the place of confinement to be designated by the Attorney General.

1187

Name of Prison where now confined if not on bail:

The defendant is now being held at the Federal House of Detention in the Southern District of New York, pending his removal to the penitentiary for sentence.

I, Jerry Bruno, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the judgment above mentioned and each and every part thereof; and from all other matters reviewable in the said Court on the grounds set forth below.

1188

Dated, New York, June 6, 1938.

JERRY BRUNO.

HERBERT ZELENKO,

One Park Place, New York City.

HENRY A. DRESCHER,

570 Seyenth Avenue,

New York City.

Attorneys for Appellant, Jerry Bruno.

GROUNDS OF APPEAL:

1189

A succinct statement of the grounds of appeal herein, among others, pursuant to Rule III of the Rules of Practice and Procedure of the United States Supreme Court in criminal cases (as promulgated May 7, 1934) as follows:

(1) Prejudicial and reversible error was committed in introducing, over objection and exception, as against the defendant, Jerry Bruno, Government Exhibit No. 25, said exhibit being incompetent, immaterial and irrelevant and not binding on defendant and not within the issues, and no proper foundation having been laid therefor.

1190

(2) Prejudicial and reversible error was committed in introducing, over objection and exception, as against the defendant, Jerry Bruno, Government Exhibit No. 25, said exhibit being incompetent, immaterial and irrelevant and introducing extraneous and remote matters.

(3) Prejudicial and reversible error was committed in introducing, over objection and exception, as against the defendant Jerry Bruno numerous other exhibits which cannot now be identified since the transcript of testimony is not yet available, and to which more specific reference will be made in the assignment of error to be filed herein pursuant to Rule 14 of the aforementioned Rules, the introduction of said exhibits being in violation of the Federal Communications Act, Title 47, Section 605, United States Code.

1191

(4) Prejudicial and reversible error was committed in introducing into evidence over objection and exception, as against the defendant Jerry Bruno other exhibits which cannot now be identified since the transcript of testimony is not yet available and to which more specific reference

111 1192 *Notice of Appeal of Jerry Bruno and Grounds of Appeal*

will be made in the assignment of error to be filed hereafter pursuant to Rule 14 of the aforementioned Rules.

(5) Prejudicial and reversible error was committed in denying said defendant's motion to dismiss the indictment at the close of the Government's case.

111 1193 (6) Prejudicial and reversible error was committed in denying said defendant's motion to dismiss the indictment at the close of entire case and to direct a verdict of acquittal.

(7) Prejudicial and reversible error was committed in denying defendant's motion to strike out various exhibits and testimony made towards the close of the case on the ground, among others, that said exhibits and testimony are not binding on defendant and no connection shown.

(8) Prejudicial and reversible error was committed in denying defendant's motion to set aside jury verdict and to dismiss the indictment.

111 1194 (9) The Court committed prejudicial and reversible error in its charge generally and specifically in reference to the failure of the defendant to testify in his own behalf.

(10) Prejudicial and reversible error was committed in denying, among others, the following request to charge:

(a) The failure of any defendant to take the witness stand and testify in his own behalf does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor shall this fact enter into the discussions or deliberation of the jury in any manner.

Notice of Appeal of Jerry Bruno and Grounds of Appeal

11

(11) Prejudicial and reversible error was committed by the Court in denying other requests to charge to which exceptions were taken and which cannot now be enumerated since the transcript of testimony is not yet available, and to which more specific reference will be made in the assignment of errors to be filed hereinafter pursuant to Rule 11 of the Rules.

(12) The charge of the Court and the marshalling and selection of evidence as well as the portions thereof to which exceptions were taken, produced prejudicial and reversible error to which specific reference will be made in the assignment of error to be filed hereafter pursuant to Rule IX of the Rules.

11

(13) Other prejudicial and reversible errors were committed as appears in the transcript of the testimony of the trial and record of the proceeding had herein to which more specific reference will be made in the assignment of errors to be filed hereafter pursuant to Rule IX of the Rules.

To:

11

HON. LAMAR HARDY,
United States Attorney for the
Southern District of New York.

Clerk of the United States District Court
for the Southern District of New York.

WILLIAM PARKIN, Esq.,
Clerk of the United States Circuit Court
of Appeals of the Second Circuit.

1198

**Notice of Appeal of Colagerio Iacono and Grounds
of Appeal**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 101-276

1199

UNITED STATES OF AMERICA,

—against—

**DON ALPHONSO, et al.,
Defendants.**

Appellant is Colagerio Iacono, who resides at 160 Mott Street, Borough of Manhattan, City of New York.

1200

Appellant's attorney is Salvatore J. Iannucci, of 401 Broadway, Borough of Manhattan, City of New York.

Offense: Conspiracy to violate United States Statutes pursuant to Title 18, Section 88.

Date of Judgment: June 14th, 1938.

Sentence: Two years imprisonment and Twenty-five Hundred (\$2500.00) Dollars fine.

Now confined at House of Detention, 427 West Street, Borough of Manhattan, City of New York.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second

*Notice of Appeal of Colagerio Iacono and Grounds
of Appeal*

1201

Circuit, from the judgment above-mentioned, on the grounds set forth below.

Dated, New York, June 16th, 1938.

COLAGERIO IACONO,
Appellant.

SALVATORE J. IANNUCCI,
Attorney for Appellant,
Office & Post Office Address,
401 Broadway,
Borough of Manhattan,
City of New York.

1202

—♦♦—
GROUNDS OF APPEAL:

1. The Court erred in denying the appellant's motion to dismiss the indictment at the end of the government's case, made on the ground that there was insufficient evidence to establish a prima facie case against appellant.

1203

2. The Court erred in denying appellant's motion to direct a verdict of acquittal, made on the ground that there was insufficient evidence to establish a case against appellant, and on the ground that all the evidence was as consistent with innocence as with guilt.

3. The Court erred in denying appellant's motion to set aside the verdict of the jury, made on the ground that there was insufficient evidence to support the verdict of the jury, and on the ground that the evidence was as consistent with innocence as with guilt.

4. The Court erred in denying the following of appel-

111 1204 *Notice of Appeal of Colagerio Iacono and Grounds
of Appeal*

lant's requests to charge, to which denials and exceptions were duly taken, to wit, numbers 17, 19, 20, 21, 22, 23, 29, 33, 34, 37 and 38.

119 1205 5. The Court erred in the admission of telegrams, telegraphic communications and money orders in violation of 47 United States Code Section 605, and appellant's rights under the Fourth and Fifth Amendments to the United States Constitution, in that said communications were wrongfully intercepted, and said communications were wrongfully obtained by usurpation of rights granted under Title 47, United States Code, Section 605.

110 1206

Assignment of Errors of Jerry Bruno**UNITED STATES CIRCUIT COURT OF APPEALS****FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,
Appellee,

—against—

COLAGEGIO IACONO and
JERRY BRUNO,
Appellants.

120

NOW COMES JERRY BRUNO, appellant above named, for his assignment of errors, and avers that in the record proceedings and final judgment entered herein on the 13th day of June, 1938, manifest errors have intervened to the prejudice of the said appellant, and presents the following assignment of errors:

120

1. That the Court erred in denying the motion to dismiss the indictment made on behalf of the aforesaid appellant at the close of the government's case, upon the ground,

(a) That the government failed to prove a conspiracy involving the appellant Bruno;

(b) That there is no evidence in the record to show that the appellant Bruno participated in the conspiracies charged in the indictment or any of the conspiracies proven at the trial;

10:10

Assignment of Errors of Jerry Bruno

(1) The government failed to prove a prima facie case against the appellant Bruno.

An exception was duly taken to the denial of said motion.

2. The Court erred in denying the motion for a direction of a verdict of acquittal made on behalf of the appellant Bruno at the end of the whole case on the ground,

10:11

(a) That the government failed to prove a conspiracy involving the appellant Bruno;

(b) That there is no evidence in the record to show that the appellant Bruno participated in the conspiracies charged in the indictment or any of the conspiracies proven at the trial.

An exception was duly taken to the denial of said motion.

10:12

3. The Court erred in denying the motion to set aside the verdict of guilty as to the appellant Bruno, made on behalf of the appellant Bruno, upon the ground,

(a) That the government failed to prove a conspiracy involving the appellant Bruno;

(b) That there is no evidence in the record to show that the appellant Bruno participated in the conspiracies charged in the indictment or any of the conspiracies proven at the trial.

An exception was duly taken to the denial of said motion.

4. The Court erred in denying the motion to set

Assignment of Errors of Jerry Bruno

1213

aside the verdict of guilty as to appellant Bruno, made on behalf of appellant Bruno, upon the ground that the verdict was contrary to law and against the weight of the evidence.

An exception was duly taken to the denial of said motion.

5. The Court erred in denying the motion to dismiss the indictment made by the defendants at the end of the Government's case, upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were proven instead of the conspiracy charged in the indictment.

1214

An exception was duly taken to the denial of said motion.

6. The Court erred in denying the motion to direct a verdict of acquittal made by the defendants at the close of the whole case upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were proven instead of the conspiracy charged in the indictment.

1215

An exception was duly taken to the denial of said motion.

7. The Court erred in denying the motion made by the defendants to set aside the verdict of the jury upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were proven instead of the conspiracy charged in the indictment.

1216

Assignment of Errors of Jerry Bruno

An exception was duly taken to the denial of said motion.

8. The Court erred in denying the motion made at the end of the government's case to strike from the record all telegrams, telegraphic communications, applications for money orders, and money orders sent by telegraph admitted in evidence, upon the ground that the admission of said evidence was in violation of Section 605 of the Federal Communications Act, because,

1217

(a) Such evidence was obtained in violation of the provisions of Section 605 of the Federal Communications Act;

(b) The method used by the government in obtaining said evidence constituted an illegal interception under the provisions of the Federal Communications Act;

(c) That the subpoenas purportedly issued in conformity with the statute, in fact violated the provisions of the Federal Communications Act.

1218

An exception was duly taken to the denial of said motion.

9. The Court erred in admitting Government's Exhibit 25 into evidence over objection and exception of the defendant, upon the ground that there was no evidence to show that the witness testifying with reference to the same, was familiar with the voice of the person or persons taking part in any of the conversations which appeared in said Exhibit 25.

Objection made to said admission was overruled, and an exception duly taken.

Assignment of Errors of Jerry Bruno

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10. The Court erred in refusing to charge appellant Bruno's request:

The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.

12

An exception was duly taken to the refusal to make said charge.

WHEREFORE, the defendant Jerry Bruno prays that the judgment herein be refused and that the sentence imposed upon the said judgment be set aside, and the indictment dismissed, and that the defendant may have such other and further relief as may be just in the premises.

HERBERT ZELENKO,
Attorney for Appellant,

Jerry Bruno,
Office & P. O. Address,
1 Park Place,
Borough of Manhattan,
City of New York.

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Assignment of Errors of-Colagerio Iacono**UNITED STATES CIRCUIT COURT OF APPEALS****FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,
Appellee,

—against—

COLAGERIO IACONO and
JERRY BRUNO,
Appellants.

Now comes COLAGERIO IACONO, appellant above named, for his assignment of errors, and avers that in the record proceedings and final judgment entered herein on the 13th day of June, 1938, manifest errors have intervened to the prejudice of the said appellant, and presents the following assignment of errors:

1. That the Court erred in denying the motion to dismiss the indictment made on behalf of the aforesaid appellant at the close of the government's case, upon the ground,

(a) That the government failed to prove a conspiracy involving the appellant Iacono;

(b) That there is no evidence in the record to show that the appellant Iacono participated in the conspiracies charged in the indictment or any of the conspiracies proven at the trial;

Assignment of Errors of Colagerio Iacono

1225

(c) That all the evidence offered against the appellant Iacono was as consistent with innocence as with guilt.

An exception was duly taken to the denial of said motion.

2. That the Court erred in denying the motion for a direction of a verdict of acquittal made on behalf of appellant Iacono at the end of the whole case, upon the ground,

1226

(a) That the government failed to prove a conspiracy involving the appellant Iacono;

(b) That there is no evidence in the record to show that the appellant Iacono participated in the conspiracies charged in the indictment, or any of the conspiracies proven at the trial;

(c) That all the evidence offered against the appellant Iacono was as consistent with innocence as with guilt.

1227

An exception was duly taken to the denial of said motion.

3. That the Court erred in denying the motion to set aside the verdict of guilty as to appellant Iacono made on behalf of appellant Iacono, upon the ground,

(a) That the government failed to prove a conspiracy involving the appellant Iacono;

(b) That there is no evidence in the record to show that the appellant Iacono participated in

11: 1228

Assignment of Errors of Colagerio Iacono

the conspiracies charged in the indictment or any of the conspiracies proven at the trial;

(c) That all the evidence offered against the appellant Iacono was as consistent with innocence as with guilt.

An exception was duly taken to the denial of said motion.

11: 1229

4. That the Court erred in denying the motion to set aside the verdict of guilty as to appellant Iacono, made on behalf of appellant Iacono, upon the ground that the verdict was contrary to law and against the weight of the evidence.

An exception was duly taken to the denial of said motion.

11: 1230

5. That the Court erred in denying the motion to dismiss the indictment made by the defendants at the end of the Government's case, upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were proven instead of the conspiracy charged in the indictment.

An exception was duly taken to the denial of said motion.

6. That the Court erred in denying the motion to direct a verdict of acquittal made by the defendants at the close of the whole case upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were

Assignment of Errors of Colagerio Iacono

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proven instead of the conspiracy charged in the indictment.

An exception was duly taken to the denial of said motion.

7. The Court erred in denying the motion made by the defendants to set aside the verdict of the jury upon the ground that there was a variance between the crime charged in the indictment, and the proof offered, and that said variance was prejudicial because several different conspiracies were proven instead of the conspiracy charged in the indictment.

123

An exception was duly taken to the denial of said motion.

8. The Court erred in denying the motion made at the end of the government's case to strike from the record all telegrams, telegraphic communications, applications for money orders, and money orders sent by telegraph admitted in evidence, upon the ground that the admission of said evidence was in violation of Section 605 of the Federal Communications Act, because,

123

(a) Such evidence was obtained in violation of the provisions of Section 605 of the Federal Communications Act;

(b) The method used by the government in obtaining said evidence constituted an illegal interception under the provisions of the Federal Communications Act;

(c) That the subpoenas purportedly issued in conformity with the statute, in fact violated the provisions of the Federal Communications Act.

11:234

Assignment of Errors of Colagiero Iacono

An exception was duly taken to the denial of said motion.

9. The Court erred in refusing to charge as follows:

In order to warrant a conviction, the proof must be such as would satisfy the judgment and conscience of the jury that the crime charged has been committed by the defendant, and they must be satisfied that there is no other reasonable conclusion possible.

11:235

An exception was duly taken to the refusal to make said charge.

10. The Court erred in refusing to charge as follows:

If the jury can reconcile the evidence before them upon any hypothesis with the innocence of the defendant, or upon any hypothesis except that of guilt, then they must acquit the defendant.

11:236

An exception was duly taken to the refusal to make said charge.

11. The Court erred in refusing to charge as follows:

The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.

An exception was duly taken to the refusal to make

Assignment of Errors of Colagerio Iacono

1237

said charge.

12. The Court erred in refusing to charge as follows:

If a witness produced by the Government fails to testify to an essential fact necessary to prove the government's case, the jury may not supply said fact or facts by conjecture as to what witnesses may know.

An exception was duly taken to the refusal to make said charge.

1238

WHEREFORE, the defendant Colagerio Iacono prays that the judgment herein be reversed, and that the sentence imposed upon the said judgment be set aside, and the indictment dismissed, and that the defendant may have such other and further relief in the premises as to this Court may seem just and proper.

SALVATORE IANNUCCI,

Attorney for Defendant,

Colagerio Iacono,

1239

Office & P. O. Address,

401 Broadway,

Borough of Manhattan,

City of New York.

M. MICHAEL EDELSTEIN,
Of Counsel.

11: 1240

**Order Extending Time to File Record on Appeal
to April 1, 1939**

UNITED STATES CIRCUIT COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 7th day of February, one thousand nine hundred and thirty-nine.

11: 1241

Present:

HON. LEARNED HAND,
HON. THOMAS W. SWAN,
HON. AUGUSTUS N. HAND,

Circuit Judges.

UNITED STATES OF AMERICA,
Appellee,

—against—

COLAGERIO IACONO and
JERRY BRUNO,
Defendants.

11: 1242

A motion having been made herein by counsel for Jerry Bruno and Colagerio Iacono to serve and file a bill of exceptions and assignments of errors in the District Court;

Upon consideration thereof it is

ORDERED that said time be and hereby is extended to and including April 1, 1939.

WM. PARKIN,
Clerk.

Stipulation as to Record**UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,
Appellee,

—against—

DON ALPHONSO, et al.,
Defendants,

COLAGERIO IACONO and
JERRY BRUNO,
Defendants-Appellants.

IT IS HEREBY STIPULATED AND AGREED that the foregoing
is a true transcript of the record of the said District
Court in the above entitled matter as agreed upon by
the parties.

Dated, New York, N. Y., March 30th, 1939.

JOHN T. CAHILL,

*United States Attorney for the
Southern District of New York,
Attorney for Appellee.*

SALVATORE J. IANNUCCI,

*Attorney for Appellant,
COLAGERIO IACONO.*

HERBERT ZELENKO,

*Attorney for Appellant,
JERRY BRUNO*

Clerk's Certificate

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Appellee,

—against—

DON ALPHONSO, et al.,
Defendants,

COLAGERIO IACONO and
JERRY BRUNO,
Defendants-Appellants.

United States of America,
Southern District of New York, ss.:

I, CHARLES WEISER, Clerk of the District Court of the United States of America for the Southern District of New York, DO HEREBY CERTIFY that the foregoing is a correct copy of the transcript of the printed record of the said District Court in the above-entitled matter as agreed on by the parties, and ordered filed by the Court.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District, this day of April, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-third.

CHARLES WEISER,
Clerk.

(SEAL)

[fol. 417] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,
against

JERRY BRUNO and COLAGERIO IACONO, Appellants

Before L. Hand, Augustus N. Hand & Clark, Circuit Judges

Appeals from judgments of conviction of the District Court for the Southern District of New York upon an indictment for a conspiracy to import, sell and possess narcotics.

Herbert Zelenko for Bruno.

M. Michael Edelstein for Iacono.

William F. Young for the appellee.

Per CURIAM :

Bruno and Iacono were indicted along with 86 others for a conspiracy to import, sell and possess narcotics; some were acquitted; others, besides these two, were convicted, but they alone appealed. They complain, (1) that if the evidence proved anything, it proved a series of separate conspiracies, and not a single one, as alleged in the indictment; (2) that unlawful telephone "taps" were allowed in evidence against them; (3) that the judge refused to charge [fol. 418] the jury properly as to the effect of their failure to take the stand; and (4) that there was not enough evidence to support the verdict.

The first point was made at the conclusion of the prosecution's case: the defendants then moved to dismiss the indictment on the ground that several conspiracies had been proved, and not the one alleged. The evidence allowed the jury to find that there had existed over a substantial period of time a conspiracy embracing a great number of persons, whose object was to smuggle narcotics into the Port of New York and distribute them to addicts both in this city and in Texas and Louisiana. This required the coöperation of four groups of persons; the smugglers who imported the drugs; the middlemen who paid the smugglers and distributed to retailers; and two groups of retailers—one in New York and one in Texas and Louisiana—who supplied the addicts. The defendants assert that there were, there-

fore, at least three separate conspiracies; one between the smugglers and the middlemen, and one between the middlemen and each group of retailers. The evidence did not disclose any coöperation or communication between the smugglers and either group of retailers, or between the two groups of retailers themselves; however, the smugglers knew that the middlemen must sell to retailers, and the retailers knew that the middlemen must buy of importers of one sort or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers. That being true, a jury might have found that all the accused were embarked upon a venture, in all parts of which each was a participant and an abettor in the sense that the success of that part with which he was immediately concerned, was dependent upon the success of the whole. That distinguishes the situation from that in *United States v. Peoni*, 100 Fed. (2) 401 (C. C. A. 2) where Peoni, the accused, did not know that Regno, his buyer, was to sell the counterfeit bills to Dorsey, and had no interest in whether he did, since Regno might equally well have passed them to innocent persons himself. *Rudner v. United States*, 281 Fed. Rep. 516, 519, 520 (C. C. A. 6); *Jezewski v. United States*, 13 Fed. (2) 599, 602 (C. C. A. 6). It might still be argued that there were two conspiracies; one including the smugglers, the middlemen and the New York group, and the other, the smugglers, the middlemen and the Texas & Louisiana group, for there was apparently no privity between the two groups of retailers. That too would be fallacious. Clearly, quoad the smugglers, there was but one conspiracy, for it was of no moment to them whether the middlemen sold to one or more groups of retailers, provided they had a market somewhere. So too of any retailer; he knew that he was a necessary link in a scheme of distribution, and the others, whom he knew to be convenient to its execution, were as much parts of a single undertaking or enterprise as two salesmen in the same shop. We think therefore that there was only one conspiracy, and it is not necessary to decide how far *Berger v. United States*, 295 U. S. 78, would independently have covered the situation, had there been more than one.

The next question concerns the admission of evidence alleged to have been incompetent, because derived through the unlawful tapping of a telephone (*Nardone v. United*

States; 302 U. S. 379). This consisted of the record of a dictagraph machine which had been interposed in a circuit [fol. 420] leading from a telephone in a room used by a government agent who was posing as a buyer of narcotics. The agent was present when a conspirator used the telephone, and testified to what he heard; the record was used to corroborate him. His testimony was that while he was bargaining with LaRose—one of the New York distributors in New York—LaRose said that the drug—cocaine—was in Bruno's possession. LaRose then called up Bruno, who was also in New York, and talked to him in Italian which the agent could not understand. The record confirmed the fact that LaRose had called up Bruno and that they had talked in Italian, but no more. In *United States v. Weiss*, 103 Fed. (2d) 348, we held that the statute did not extend to intrastate telephone talks, and that alone would be enough here; but against the possibility that the Supreme Court may take another view, we think that, even though the record was incompetent, its admission was not serious enough error to justify reversal. True, it did confirm the agent's testimony that LaRose talked to Bruno, and that in turn corroborated what the agent said LaRose had told him of Bruno's part in the sale. We do not believe, however, that the result would have been different, had the agent's testimony stood alone, for, although the only other testimony incriminating Bruno was of accomplices, there was nothing to shake the agent's testimony, or any reason, except possible excess of zeal, to doubt the truth of what he said. The proof of guilt was too strong to upset the verdict for such an error, if it was an error at all.

Finally as to the judge's charge. He was asked to tell the jury that they should not take it against the defendants that they had not testified in their defense. This he failed to do, and told them instead that it was a defendant's privilege [fol. 421] to testify, but that when he did so, his credibility was "to be determined in the light of his interest which . . . is . . . a matter which may seriously affect the credence that shall be given to his testimony." It must be confessed that this was not the equivalent of what the defendant had requested. We have not been able to find much that is helpful by way of interpretation of the statute (§ 632, Title 28, U. S. Code). In *Stout v. United States*, 227 Fed. Rep. 799, 803, 804 (C. C. A. 8), it was assumed that if such a request were made, it would be error to refuse it;

and in *Hersch v. United States*, 68 Fed. (2) 799, 802 (C. C. A. 9), that was definitely held, though apparently less because the instruction was itself important, than because an earlier comment of the judge had made it so. On the other hand in *Swenzel v. United States*, 22 Fed. (2) 280, we held that such a refusal did not require us to reverse. The statute is primarily intended to prevent the affirmative use of the accused's failure as an inference of guilt; and it would not be an error to refuse to charge the jury that they must not make that inference—at least it would not be except under some unusual circumstances that we cannot foresee. The important thing to bear in mind is the probable futility of the instruction. When an accused does not take the stand, everybody knows that he fears to do so, for a man will not forego anything that may exculpate him. Sometimes no doubt he may merely be afraid that he cannot get out the truth on the stand, but that is very seldom. Ordinarily it is because he fears the disclosure which will result. Everybody knows this, and nobody can fail to make the inference, if he thinks about it at all; the accused's only safety is in [fol. 422] having his failure kept as much as possible in the background. Hence the real protection, and the only practical protection, is in preventing the prosecution from using it as the basis of an inference of guilt. That is indeed a very real protection, for the prosecution's freedom would be a very deadly weapon; but the advantage derivable from an admonition by the judge that the jury shall make no such inference is wholly illusory; and only serves to put before them what will generally harm the accused, if it does anything at all.

The last point is as to the sufficiency of the evidence. There is nothing to be said about this as to Bruno, who was plainly guilty. Iacono was probably guilty also, but the evidence to establish his guilt was tenuous. All that was shown was that he had received in New York seven money orders from members of the Louisiana retailers, some of them taken out in assumed names. They were for about \$6800 in the aggregate, but it did not appear that they covered the proceeds from the sales of narcotics. Even if these documents were enough to convict Iacono of complicity in some sort of illicit enterprise—itsself a somewhat gratuitous assumption—the accused were shown to have been a disreputable lot and all sorts of ventures may have been afoot

among them. The remittances should have been more closely interwoven with the sale of narcotics. The case is close, but we think that not enough was shown.

Judgment reversed as to Iacono.

Judgment affirmed as to Bruno.

[fol. 423] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

JERRY BRUNO, Defendant-Appellant

Upon the annexed stipulation dated July 19th, 1939, it is hereby

Ordered, that M. Michael Edelstein be and he hereby is substituted as the attorney for the defendant-appellant Jerry Bruno in place and in stead of Herbert Zelenko, Esq.

Dated, New York, July 19th, 1939.

D. E. Roberts, Clerk.

[fol. 424] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

JERRY BRUNO, Defendant-Appellant

It is hereby stipulated and agreed, by and between Jerry Bruno, the defendant-appellant, and his attorney Herbert Zelenko, Esq., that M. Michael Edelstein, be and hereby is substituted as the attorney for the defendant-appellant in place and stead of Herbert Zelenko, Esq., and an order to that effect may be entered without further notice.

Dated, New York, July 19th, 1939.

Jerry Bruno, Defendant-Appellant in Person; Herbert Zelenko, Attorney for Defendant-Appellant; M. Michael Edelstein.

[fol. 425] STATE OF NEW YORK,
County of New York, Southern District of
New York, ss:

On this 19th day of July, 1939, before me personally came the defendant-appellant, Jerry Bruno to me known and known to me to be the individual mentioned and described in the foregoing consent, and duly acknowledged to me that he executed the same for the uses and purposes therein set forth.

Martha R. Neubert, Notary Public, N. Y. Co., N. Y.
Co. Clk's No. 19 Reg. No. 1N3 Comm. expires
March 30, 1941. (Seal.)

[fol. 426] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America, Appellee, against Jerry Bruno, Defendant-Appellant. Stipulation and Order of Substitution. United States Circuit Court of Appeals, Second Circuit. Filed July 20, 1939. D. E. Roberts, Clerk.

[fol. 427] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 20th day of July, one thousand nine hundred and thirty-nine.

Present: Hon. Learned Hand, Hon. Augustus N. Hand,
Hon. Charles E. Clark, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

vs.

JERRY BRUNO, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 428] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Jerry Bruno. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed July 20, 1939. D. E. Roberts, Clerk.

[fol. 429] UNITED STATES OF AMERICA, SOUTHERN DISTRICT
OF NEW YORK

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 428, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States of America, Plaintiff-Appellee against Jerry Bruno, Defendant-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of July, in the year of our Lord, one thousand nine hundred and thirty nine, and of the Independence of the said United States the one hundred and sixty-fourth.

D. E. Roberts, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

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SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is advanced and assigned for argument on Monday, November 6th.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO REQUESTED INSTRUCTION NUMBER 37 (R. 345)—Filed October 21, 1939

It is hereby stipulated by and between counsel for the parties to the above entitled cause that requested instruction No. 37, referred to at R. 345, which was refused by the trial court, is identical in language with the requested instruction set forth in ground of appeal No. 10 (R. 398) contained in the petitioner's notice of appeal and also with the requested instruction set forth in assignment of error No. 10 (R. 407) of petitioner's assignment of errors in the court below.

M. Michael Edelstein, Counsel for petitioner. Robert H. Jackson, Solicitor General.

October 21, 1939.

[File endorsement omitted.]

FILE COPY

Office - Supreme Court, U. S.

FILED

AUG 18 1939

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 300

JERRY BRUNO,

Petitioner and Appellant below,

against

UNITED STATES OF AMERICA,

Respondent and Appellee below.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT AND BRIEF IN
SUPPORT THEREOF.**

M. MICHAEL EDELSTEIN,
Counsel for Petitioner.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

JERRY BRUNO,
Petitioner and Appellant below,

against

UNITED STATES OF AMERICA,
Respondent and Appellee below.

No.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.**

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED
STATES:

The petition of Jerry Bruno respectfully shows:

I.

Summary Statement of the Matter Involved.

Petitioner was convicted by a jury, after a trial in the United States District Court for the Southern District of New York, upon an indictment (R. 7) charging him and some eighty-seven other defendants with having conspired to violate certain United States Statutes relating to the importation of, and payment of duties and taxes upon narcotic drugs.

Petitioner was sentenced to serve a term of two years and to pay a fine of five thousand (\$5000.00) Dollars (R. 5).

Petitioner appealed to the United States Circuit Court of Appeals for the Second Circuit upon the ground that the trial court had erred in making certain rulings. The Circuit Court in a *per curiam* opinion (R. 417) by Judges L. Hand, A. N. Hand and Clark affirmed the conviction.

The first question raised by petitioner involves the following request to charge which was denied by the trial court (R. 345, 407):

"The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner."

Petitioner did not testify at the trial. On this point the trial court in its charge stated (R. 332):

"It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony."

The Circuit Court below stated that the trial court's charge was not the equivalent of the charge requested (R. 419).

The Circuit Court disagreed with the view held by other Circuit Courts that the refusal of the trial court to give

the requested charge is reversible error. It disagreed on the ground that it believed such a charge to be futile, as the attention of the jury is drawn to the fact that defendant did not take the stand. The Circuit Court seems to have overlooked the fact that the trial court in its charge had already called this matter to the attention of the jury by stating a defendant might elect whether or not to testify. Thus the trial court had created the situation which petitioner's request to charge sought to remedy.

Petitioner respectfully submits that the Circuit Court erred in its interpretation of the statute applicable to this situation (Title 28, U. S. C. §632). The failure of the trial court to charge as requested seriously prejudiced the consideration of his case by the jury. The doctrine enunciated by the Circuit Court below (R. 420), in upholding the trial court, is novel and violates the intent of the provision contained in the Constitution of the United States, Article V which provides that no person "shall be compelled in any criminal case to be a witness against himself."

The next point involves the contention raised in the trial court that the prosecution proved several distinct conspiracies instead of the single one alleged, and that the submission of multiple and complex issues involving numerous defendants prejudiced the consideration of petitioner's case by the jury (R. 273).

The Circuit Court stated (R. 417) that it could be found from the evidence that four distinct groups existed, smugglers who imported the drugs, middlemen who purchased the drugs from the smugglers, and who in turn resold them to at least two groups of retailers. The Circuit Court admitted that the evidence did not show any co-operation between the smugglers and the retailers or among the separate retailers. In spite of the evidence the Circuit Court reached the conclusion that there was a single conspiracy because the smugglers must have

known that the middlemen must sell to retailers and the retailers knew that the middlemen must buy from importers (R. 418).

Petitioner submits that the view set forth by the Circuit Court for holding that one conspiracy existed, has no legal basis. A conspiracy is based on agreement, more or less definite, to do specific acts, or accomplish a particular result. Here the evidence fails to indicate that the smuggler group were concerned in any way with the activities of the retail groups. The smugglers' interest ended when they received their money and delivered the contraband. The middleman received no pay from the smugglers for their enterprise in distribution, nor did they share in the smuggler's receipts. That each group knew that others might be engaged in similar activities does not warrant a finding that the groups were members of one group of conspirators. The evidence shows that the same analysis holds true for the relationship between middlemen and retailers. In fact the group of retailers, of which petitioner allegedly was a member, could obtain no narcotics and disbanded long before the arrest of the middlemen, whose arrest in turn took place months before the western retailers were apprehended.

Petitioner was prejudiced by the fact that multiple and complex issues, involving numerous defendants, were submitted to the jury for decision whereas, if the conspiracy with which petitioner were charged were submitted to the jury, a simple issue only involving two defendants would have been presented. Evidence was admitted relating to members of other conspiracies showing their participation in immoral and criminal enterprises unconnected with the conspiracy charged in the indictment. Petitioner was entitled to a fair consideration of the specific charge against him. The prosecution by consolidating the various different conspiracies and numerous defendants made it difficult to submit to the jury the simple issue of petitioner's guilt.

The next question relates to the admission, over objection, of evidence (Gov. Ex. 25 in evidence, admitted R. 267; printed R. 350) derived through the unlawful tapping of a telephone. The evidence consisted of a written record of what was heard when an alleged conspirator, in the presence of an agent purported to telephone the petitioner. The telephone conversation took place in New York City.

Petitioner submits that such evidence was incompetent, having been obtained in violation of the provisions of the Federal Communications Act (47 U. S. C. §605).

II.

Reasons Relied on for the Allowance of the Writ.

1—There is a diversity of opinion between the Circuit Courts of Appeals for the Second, Seventh, Eighth and Ninth Circuits as to whether or not a defendant is entitled to a requested charge that no presumption shall be made by the jury because of the said defendant's failure to testify. The Second Circuit holds that the defendant is not entitled to the charge. (*Swenzel v. U. S.*, 22 Fed. [2] 280 [1927]; *U. S. v. Bruno*, decided July 10, 1939, unreported.) The Seventh, Eighth and Ninth Circuits hold a defendant is entitled to such a charge. (*Hersch v. U. S.*, 68 Fed. [2] 799, 802 [C. C. A. 9, 1934]; *Stout v. U. S.*, 227 Fed. 799, 803, 804 [C. C. A. 8, 1915]; *Michael v. United States*, 7 Fed. [2] 865 [C. C. A. 7, 1925]).

2—The question of the charge to the jury involves the interpretation of a Federal Statute (Title 28 U. S. C. §632) and of the Constitution of the United States (Article V—provision against self-incrimination). This question has not been passed upon by the United States Su-

preme Court and is of sufficient importance to the judicial administration of trials in criminal cases to warrant its consideration.

3—There is a diversity of opinion between the Circuit Courts of Appeals for the First, Second, Third and Sixth Circuits as to whether or not the provision of the Federal Communications Act affect intrastate communications. The Third and Sixth Circuits hold that it does and that evidence obtained by illegal interception of intrastate communications is inadmissible. *Sablowsky v. United States*, 101 Fed. (2); 183 (C. C. A. 3, 1938); *Diamond v. United States*, 94 Fed. (2) 1012 (C. C. A. 6, 1938). The First and Second Circuits hold that the act only affects interstate communications, and that such evidence though illegally obtained is admissible. *Valli v. United States*, 94 Fed. (2) 687 (C. C. A. 1, 1938); *United States v. Weiss*, 103 Fed. (2) 348 (C. C. A. 2, 1939).

4—Whether or not evidence obtained by illegal interception of an intrastate message is admissible, involves the interpretation of a Federal statute (47 U. S. C. §605). In *United States v. Nardone*, 302 U. S. 379 (1937), this court passed upon said statute and decided that evidence obtained by the illegal interception of an interstate communication is inadmissible. Petitioner submits that it is important to proper judicial administration that this court decide whether the *Nardone* decision is also applicable to intrastate messages.

5—This case involves an important question affecting the law of criminal conspiracy. The evidence showed that petitioner was a purported member of a group of people (retailers) purchasing narcotic drugs from another group (middlemen) who in turn purchased from a group of smugglers. Another group (retailers) existed who also

purchased from the middlemen. The Circuit Court upon the presumption that the retailers and smugglers must have had knowledge of each other's activities, held that all the groups were engaged in a single conspiracy. Petitioner contends that each group was engaged in a separate illegal enterprise and that a sale from one group to another did not make the buying and selling groups conspirators. Petitioner believes that the holding of the Circuit Court seriously affects the judicial administration of criminal law and materially prejudices the trial of a defendant.

WHEREFORE, your petitioner prays that Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Second Circuit directing said court to certify and send to this court a full and complete transcript of the record and the proceedings of the said Circuit Court, had in the case numbered and entitled on its docket, Cal. No. 339, *United States of America, Appellee, v. Jerry Bruno, Appellant*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that judgment herein of said Circuit Court of Appeals be reversed by this court; and for such other and further relief as to this court may seem proper.

Dated, August 16, 1939.

JERRY BRUNO,
By M. MICHAEL EDELSTEIN,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

JERRY BRUNO,
Petitioner and Appellant below,

against

UNITED STATES OF AMERICA,
Respondent and Appellee below.

No.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of the Courts Below.

There was no opinion rendered by the trial court relating to the within petitioner. The opinion of the Circuit Court below (R. 417) rendered July 10, 1939, is still unreported.

II.

Jurisdiction.

A. The United States Circuit Court of Appeals for the Second Circuit made its order for mandate herein on July 20, 1939 (R. 422).

B. The jurisdiction of this court is invoked pursuant to the provisions of Title 28, U. S. Code, §347, subdiv. a (Judicial Code §240-a, as amended), and Rule 38 of the Revised Rules (1939) of the Supreme Court of the United States.

C. The reasons stated in the preceding petition under II (pp. 5-7), herewith adopted and made a part of this brief, are believed to constitute good grounds for invoking the jurisdiction of this court.

III.

Statement of the Case.

A statement of the case has been made in the preceding petition under I (pp. 1-5) which is hereby adopted and made a part of this brief.

IV.

Specifications of Errors.

A. The Circuit Court erred in holding that the trial court correctly refused to make the following charge (Assignment of Error No. 10, R. 407):

"The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner."

B. The Circuit Court erred in holding that there was no variance between the conspiracy charged in the indictment and the proof offered on trial. (Assignments of Error Nos. 5, 6, 7, R. 405.)

C. The Circuit Court erred in holding that the trial court properly admitted into evidence Government's Exhibit 25 (R. 142-146, admitted 267, printed 350) obtained by Government agents by the illegal interception of an intrastate telephone message.

V.

Summary of the Argument.

A. Petitioner's requested charge that no presumption shall be made by the jury because of the petitioner's failure to testify should have been granted because,

(1) the trial court in its charge had mentioned that the defendants had the privilege of electing whether or not to testify, and

(2) Such a charge is mandatory under Article V of the Constitution and Title 28, U. S. Code, §632.

B. Prejudicial variances existed between the conspiracy charged in the indictment and the crimes established by the evidence. Application of the rule in *Berger v. U. S.*, 295 U. S. 78 (1935), required the granting of petitioner's motion to dismiss the indictment, to acquit the petitioner and to set aside the verdict, respectively made in the trial court.

C. Government's Exhibit 25 was incompetent and improperly received in evidence, having been obtained in violation of the provisions of the Federal Communications Act.

ARGUMENT.

A.

Petitioner's requested charge, that no presumption shall be made by the jury because of the Petitioner's failure to testify, should have been granted.

1. *Because the Trial Court in its Charge had mentioned that the Defendants had the Privilege of Electing Whether or Not to Testify.*

The trial court by mentioning the defendants' privilege of electing to testify (R. 332) brought to the jury's attention the failure of petitioner to make such election. The Circuit Court's view (R. 420) that the failure of a defendant to testify should be kept in the background as much as possible for his protection, therefore has no force herein. The matter having been placed before the jury, it would draw the very conclusion the statute (28 U. S. C., §632) sought to avoid. Petitioner was therefore entitled to the charge. *Hersch v. United States*, 68 Fed. (2) 799, 807 (C. C. A. 9, 1934). Failure to give the charge under these circumstances constituted error.

Wilson v. United States, 149 U. S. 60, 67 (1892);
McKnight v. United States, 115 Fed. 972, 981
 (C. C. A. 6, 1902).

2. *Because Such a Charge is Mandatory Under Article V of the Constitution and Title 28, U. S. Code, §632.*

At common law a defendant could not be compelled to testify against himself; nor could he testify in his own behalf. The rule against self-incrimination was incor-

porated in the Fifth Amendment to the Constitution. To permit defendants to testify in their own behalf, there was enacted in 1878 the statute now contained in Title 28, U. S. C., §632. In conformance to the constitutional provision against self-incrimination, this enactment stated no presumption should be made from the failure of a defendant to testify. See *Wilson v. United States*, *supra*, 65.

As the enactment did not, and could not, modify the constitutional protection accorded a defendant, petitioner was entitled to the requested charge setting forth the right of a defendant not to be compelled to incriminate himself. Petitioner was likewise entitled to a statement of the law as contained in 28 U. S. C., §632, showing not only his privilege of election to testify, but his protection from presumption in the event of non-exercise of the privilege. The refusal to give the requested charge completely deprived petitioner of the protection of the constitutional provision against self-incrimination.

The view of the Circuit Court below that anything said about the defendant's failure to testify brings the matter prejudicially before the jury, is untenable and speculative. Such a view is based on the assumption that the jury hearing the case does not see what is obvious to court and counsel. The failure of a defendant to take the stand is already prejudicially before the jury if nothing is said of his right against self-incrimination. A defendant's only opportunity to remove the prejudice lies in an impressive charge concerning defendant's right. Petitioner alone had the right to decide whether or not the charge was necessary to his defense. Having made the request it should have been granted. *Michael v. United States*, 7 Fed. (2) 865, 866 (C. C. A. 7, 1925); *Stout v. United States*, 227 Fed. 799, 803 (C. C. A. 8, 1915); *Hersch v. United States*, *supra*, 807.

B.

Prejudicial variance existed between the conspiracy charge in the indictment and the crimes established by the evidence.

Application of the rule stated in *Berger v. United States*, 295 U. S. 78 (1935), required the granting of petitioner's motions at the trial based on such variance. The Circuit Court in its opinion stated (R. 417) and it is not disputed, that at least four distinct groups existed as revealed from the evidence at the trial. One group consisted of smugglers who imported the drugs; a second group of middlemen who purchased the drugs from the smugglers and resold them to retailers; and two groups of retailers, one in New York, of which petitioner was allegedly a member, and the other operating in the western part of the United States. The Circuit Court conceded that the evidence showed no co-operation between the smugglers and the retailers, or between the two groups of retailers. In spite of this the Circuit Court reached the conclusion that these groups constituted a single set of conspirators.

The view set forth by the Circuit Court is based on a presumption that the smugglers must have known that the middlemen were selling to retailers and the retailers must have known that the middlemen were purchasing from the smugglers. This view has no legal basis. Each transaction between the smugglers and the middlemen constituted a sale. The smugglers' interest ended when they received their money and turned over the contraband. The middlemen received no pay from the smugglers for distributing the contraband, nor did they share in the smugglers' receipts. That each group knew that the other might be engaged in similar illegal activity does

not warrant a presumption that the groups constituted one set of conspirators.

The same analysis holds true for the relationship between the middlemen and the separate groups of retailers. The only transaction between the middlemen and the retailers was the sale of narcotics and the receipt of money. Neither the retailers nor the middlemen had any other interest in each other's activities. In fact, the group of retailers of which petitioner allegedly was a member (the Mauro group) terminated its existence in December, 1936 (R. 61, 71, 72), whereas the middlemen were not arrested until May, 1937 (R. 31, 32). The other group of retailers in the West were not apprehended until about October, 1937.

The Supreme Court has indicated that there can be no conspiracy between the buyer and the seller unless some element is present other than the sale itself. *United States v. Katz*, 271 U. S. 354, 355 (1925). Successive sales do not link the successive buyers and sellers into a conspiracy. *United States v. Peoni*, 100 Fed. (2) 401 (C. C. A. 2, 1938). The fact that the buyer and the seller in this case was in each instance a group rather than an individual does not change the legal situation.

In this case the variance was prejudicial to the petitioner because of complexity of the issues involved, the numerous witnesses heard and the type of evidence admitted against defendants other than petitioner. Under the rule of the *Berger* case variance is fatal only if prejudice be established. In the instant case the trial continued for a month. The transactions covered a period of several years. Eighty-eight defendants were named in the indictment and seventy-seven witnesses appeared before the jury. Evidence was admitted against other defendants which was not competent or material to the charge against the petitioner. The evidence was of a highly prejudicial nature and showed that these other defend-

ants were engaged in various illegal activities such as prostitution (R. 153, 216, 224), loan shark dealings (R. 71, 97, 98), fraud and thievery (R. 33, 35, 46; R. 88, 89-91), gambling (R. 87, 98). The general character of the evidence produced, the length of the trial, the jumble of names, places and dates, all contributed to the serious prejudice of petitioner's trial. Motions made in the trial court based on the variance between the proof offered and the charge in the indictment should have been granted.

C.

Government's Exhibit 25 was incompetent and improperly received in evidence, having been obtained in violation of the provisions of the Federal Communications Act.

The question of the admissibility of evidence of an intrastate communication obtained by wire tapping, has been passed upon in the Circuit Courts of Appeals in the First, Second, Third and Sixth Circuits. *Valli v. United States*, 94 Fed. (2) 687 (C. C. A. 1, 1938), and *United States v. Weiss*, 103 Fed. (2) 348 (C. C. A. 2, 1939) hold such evidence admissible. *Sablowsky v. United States*, 101 Fed. (2) 183 (C. C. A. 3, 1938) and *Diamond v. United States*, 94 Fed. (2) 1012 (C. C. A. 6, 1938), hold such evidence inadmissible.

The views set forth in the *Sablowsky* case are in conformance with the spirit of the decision of the Supreme Court in *Nardone v. United States*, 302 U. S. 379 (1937). Although the communications under consideration in the *Nardone* case were interstate in character, that feature was of little importance in the decision of the case. The Supreme Court viewed the practice of wire tapping by federal officers as a grave wrong. It seems clear that the wrong is not lessened when the communication is intrastate rather than interstate.

CONCLUSION.

It is respectfully submitted that the questions raised in this case are of sufficient importance to require this Court to issue a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review its decision made herein.

M. MICHAEL EDELSTEIN,
Counsel for Petitioner.

APPENDIX A.

28 U. S. Code §632.

“§632. In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and court-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him. (Mar. 16, 1878, c. 37, 20 Stat. 30.)”

47 U. S. Code §605.

“No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers, of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person;

and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto.: * * *

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. 300.

JERRY BRUÑO,

Petitioner,

v.

UNITED STATES OF AMERICA.

**ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT.**

BRIEF ON BEHALF OF PETITIONER.

M. MICHAEL EDELSTEIN,
Counsel for Petitioner.

SAMUEL B. WASSERMAN,
on the Brief.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. 300.

JERRY BRUNO,

Petitioner,

v.

UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF PETITIONER.

Opinion Below.

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R 417-421) is reported in 105 Fed. (2d) 921.

Jurisdiction.

The Circuit Court of Appeals made its order, affirming petitioner's conviction in the District Court, on July 20, 1939 (R 422). The petition for a writ of certiorari, filed herein on August 18, 1939, invoked the jurisdiction of the Court under Title 28 U. S. Code 347 (a).

Certiorari to the Circuit Court of Appeals for the Second Circuit was granted herein on October 9, 1939.

Statement.

Petitioner and 87 others were indicted in the United States District Court for the Southern District of New York for conspiracy to violate certain United States laws

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relating to the importation and payment of duties and taxes upon narcotic drugs (R 7-16). Petitioner and 14 others were tried together. Petitioner and some of the others were convicted. Petitioner was sentenced to serve a term of 2 years and to pay a fine of five thousand (\$5,000.00) Dollars (R 5). Petitioner and another appealed to the Circuit Court of Appeals for the Second Circuit which affirmed petitioner's conviction in a *per curiam* opinion (R 417-421) by Circuit Judges L. Hand, A. N. Hand, and Clark.

Petitioner did not testify at the trial but some of the other defendants did. The trial court, in its charge, said (R 332):

"It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony."

The defendants requested the following charge which was denied and an exception was duly taken (R 345, 407):

"The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner."

The evidence presented at the trial showed violations of the narcotic laws on a large scale in New York, Louisiana and Texas. The Circuit Court stated that it could be found from the evidence that a conspiracy

existed requiring the cooperation of four groups of persons; smugglers who imported the drugs, middlemen who distributed them and two groups of retailers, one in New York and the other in Louisiana and Texas (R 417). The Circuit Court conceded that no connection was shown between the smugglers and either group of retailers (R 418).

An analysis of the evidence will show that the classification adopted by the Circuit Court was greatly oversimplified. Not only were these groups involved but the evidence revealed that the smugglers consisted of two unconnected groups, that the "retailers" consisted of at least three groups and that one of them in turn sold to other retailers.

The smugglers consisted of two unconnected groups; one, the Caputo brothers and their associates, Lago and San Pedro, smuggled opium into New York by means of transatlantic liners (R 79); the other consisted of John Vencileoni, who smuggled heroin by the same means, and who was aided in removing the heroin from boats by Charles Morgan, Louis Liguorio and Louis Colonna (R 89, 90, 91, 117, 118).

The middlemen, a group consisting of Lucien Ignaro, Louis Ruppolo, Vincent Carrerria and Felix Papa, were organized in December, 1936, for the purpose of buying narcotics from the smugglers and selling it to retailers (R 71-73). The members of the Ignaro group were arrested on May 24, 1937, at which time the existence of their group was terminated (R 31, 32, 103).

Prior to the formation of the above mentioned group of middlemen in December, 1936, Ignaro had acted as a lone middleman, selling narcotics to a New York group allegedly consisting of Al Mauro, Don Alphonso (Alphonso Marzano) and Jerry Bruno, the petitioner (R 71-73). This group was formed some time in 1936 (R 48-61) and ended its existence in December, 1936 (R 61, 71-73).

The Ignaro group of middlemen, after its formation, re-sold the narcotics it obtained from the smugglers to various individuals and groups. One New York group was composed of Dominick Vaccaro, Little Joe and Frenchy (R 71, 72, 76, 77, 78). Other purchasers were Dominick Visco (R. 82-84), Louis King (R 82-84), and Nicholas Gentile (R 80, 81, 86, 87).

Nicholas Gentile sold narcotics in Louisiana through his agents, Anthony Lima, Frank Cicciofera, Thomas Siracuso and Jimmy Campo (R 86, 93, 155, 158, 159, 166, 167). They sold narcotics to the Bonura brothers (R 172, 173) who in turn sold to others (R 171).

Gentile also sold narcotics in Texas through Biaggio Angelica (R 185, 192) who sold through Anthony Virizi, Leo Attanasio, August Simonecini, Alphonse Attardi and Vincent Gentiluomo (R 149, 150, 183, 184, 190, 191, 210, 211) to various individuals named Joe Massa, Joe Passarello and Katherine Phillips. Massa was partners with one, Sgitcavitch (R 175) and they sold to one, McDonald (R 184, 192).

The evidence tended to establish that petitioner was a member of one of the New York group of "retailers" composed of Al Mauro, Don Alphonso (Alphonso Marzano, R 48, 317) and Willie Ross. Al Mauro pleaded guilty and testified for the government (R 48-66). Marzano stood trial, testified on his own behalf (R 317-319), and was acquitted. Don Alphonso denied the testimony given by Mauro (R 318). Mauro's testimony was vague and unconvincing in its details, and his credibility was affected not only by Don Alphonso's denial but by the picture of him as head of a group, given in Ruppolo's testimony (R 68, 69, 71, 72). Mauro testified that he knew Don Alphonso for seven or eight years; that in the winter of 1936, he, Alphonso, Bruno and Willie Ross started handling narcotics; that Alphonso bought some narcotics and that Ross and he were to sell it; that the profit was to be split between the four of them; that as they sold some of the narcotics, they received more

narcotics from Alphonso; that Don Alphonso and Jerry Bruno did not do anything with the drugs but that he and Willie Ross did everything in connection with the illicit transactions (R 48, 49, 50).

The only other evidence against petitioner involved the supposed sale of a twenty-five ounce can of cocaine to agent Esch by one, Dick La Rose alias Di Marzo (R 32, 33, 109). Di Marzo obtained \$375.00 from Esch and absconded to California without delivering the cocaine. He pretended to be able to obtain the cocaine from petitioner (R 26, 27, 359). Cellentano, who was involved with Di Marzo in the above fraudulent transaction (R 109) testified that he recovered a twenty-five ounce can of cocaine from Mauro through the intervention of petitioner (R 36). Cellentano at first stated that he told Bruno to keep one-third of the drugs or the proceeds, in return for his assistance (R 36, 37) but on cross-examination he stated that Mauro had said he would give Bruno one-third (R 39). Mauro denied that petitioner had had any interest in the cocaine (R 52).

Specification of Errors.

1. The Circuit Court erred in holding that the trial court correctly refused to make the following charge (Assignment of Error No. 10, R 407):

"The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner."

2. The Circuit Court erred in holding that there was no variance between the conspiracy charged in the indictment and the proof offered on trial. (Assignments of Error Nos. 5, 6, 7, R 405).

Summary of the Argument.

I. Petitioner's requested charge, that the jury shall make no presumption against him because of his election not to testify, should have been granted by the trial court.

A. Such a charge is mandatory under the Fifth Amendment to the Constitution of the United States and Title 28, U. S. Code, §632.

B. The charge given by the trial court on this question prejudiced the petitioner by calling the jury's attention to the failure of the petitioner to make such election, without informing the jury of the full extent of petitioner's legal protection provided by law.

II. Variance existed between the conspiracy charged in the indictment and the crimes established by the evidence. This variance affected the substantial rights of the petitioner. Application of the rule in *Berger v. U. S.*, 295 U. S. 78, 82 (1935), required the granting of petitioner's motions to dismiss the indictment and to acquit the petitioner.

ARGUMENT.

I.

Petitioner's requested charge, that the jury shall make no presumption against him because of his election not to testify, should have been granted by the trial court.

A. Such a charge is mandatory under the Fifth Amendment to the Constitution of the United States and 28 U. S. Code, §632.

The petitioner did not testify at his trial. The Circuit Court conceded that the trial court's charge (p. 2, *supra*) was not the equivalent of the one requested (p. 2, *supra*), but stated that the statute's purpose was to prevent affirmative use of the accused's failure to testify as an inference of guilt; and that the instruction requested was probably futile, accused's only safety being to keep his failure as much in the background as possible (R 419, 420).

Petitioner contends that the reasoning of the Circuit Court disregards the provisions for his protection contained in the Fifth Amendment to the Constitution and 28 U. S. Code, §632. The Fifth Amendment provides:

"No person . . . shall be compelled in any criminal case to be a witness against himself, . . ."

Title 28 U. S. Code, §632 provides:

"In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and court-martial, and courts of inquiry, in any State or Territory, including the Dis-

trict of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him. Mar. 16, 1878, c. 37, 20 Stat. 30.)”

A summary of the historical background of the above provisions will be helpful. At common law, a defendant could not be compelled to give evidence against himself. The Fifth Amendment incorporated this rule into the Constitution so that no compulsion could be applied to make a defendant testify. *McKnight v. United States*, 115 Fed. 972, 981, 982 (C. C. A. 6, 1902).

At common law, likewise, a defendant was not permitted to testify in his own behalf. The possible injustice worked by this rule was remedied by the statutory provision quoted above. *Wilson v. United States*, 149 U. S. 60, 65, 66 (1892).

Recognizing that not all defendants might desire to exercise the privilege of testifying, the statute specifically provided that no presumption might be made from such non-exercise. Even if the statute had not contained such a provision, the supremacy of the constitutional provision would have caused it to be implied, to protect silent defendants from any hostile comment.

The importance of the requested instruction to a defendant is revealed by the Circuit Court in its opinion.

“When an accused does not take the stand, everybody knows that he fears to do so, for a man will not forego anything that may exculpate him. Sometimes, no doubt, he may merely be afraid that he cannot get out the truth on the stand, but that is very seldom. Ordinarily it is because he fears the disclosure which will result. Everybody knows this, and nobody can fail to make the inference, if he thinks about it at all; the accused’s only safety is in having his failure kept as much as possible in the background (R. 420).”

If everybody believes that a person failing to take the stand is actuated by fear, then the privilege of testifying creates a presumption which extinguishes the constitutional protection of the Fifth Amendment. Section 632 has been in existence so long that jurors today know that a defendant may testify, but do not know the constitutional protection provided by the rule against self-incrimination. Obviously the only way to make the defendant's rights known to the jury is by a clear, correct statement of the applicable law. If the eyes of the jury see the taint of guilt on every defendant who remains silent, then the necessity of a charge such as that requested, is conclusively established.

The reasoning of the Circuit Court is similar to arguments made before the rule against self-incrimination became established. The rule first became firmly established in England about 1641. 4 *Wigmore on Evidence*, pp. 814, 815. In 1590 we find the precursor of the Circuit Court's argument in the trial of a defendant for seditious libel. A summary of the case is given in 4 *Wigmore on Evidence*, p. 811:

"1590, *Udall's Trial*, 1 How. St. Tr. 1271, 1275, 1289: Udall pleaded not guilty; and after argument made and witnesses testifying, Judge CLARK: 'What Say You? Did you make the book, Udall, yes or no? What say you to it, will you be sworn? Will you take your oath that you made it not?' declaring this to be a favor; Udall refused, and the judge finally asked: 'Will you but say upon your honesty that you made it not?' Udall again refused; Judge CLARKE: 'You of the jury consider this. This argueth that, if he were not guilty, he would clear himself'; then to Udall: 'Do not stand in it; but confess it.'"

The Circuit Court probably would not permit a comment of that nature by a trial court, but it held the requested charge unnecessary while admitting the existence of the prejudice which such a comment would engender.

To carry the rule against self-incrimination to its logical conclusion in justice to a defendant, the trial court not only must state that the defendant cannot be compelled to take the stand but that no presumption can be drawn against him because of his silence.

The direction, in the statute (Section 632), that no presumption shall be made because of a defendant's failure to become a witness is not merely a protection against comment upon the matter. It is an existing law to be applied to the facts. A defendant is entitled to have the jury instructed in the law pertaining to the facts before it. The failure of a defendant to take the stand is a fact, as readily apparent to the jury as it is to the court and counsel. This prejudicial fact can only be removed by a clear, impressive instruction of the law.

Petitioner's contention that the charge requested is mandatory is supported by decisions of the Seventh and Eighth Circuits. In *Stout v. United States*, 227 Fed. 799 (C. C. A. 8, 1915), the court, interpreting Section 632, *supra*, said, p. 803:

"This statute restrains both court and counsel from comment upon the failure of the accused to testify. *Wilson v. United States*, 149 U. S. 60, 13 Sup. Ct. 765, 37 L. Ed. 650. If he asks it, he is entitled to an affirmative instruction upon the subject, even in the absence of wrongful comment."

In that case the requested statement of the defendant's immunity was broader than the statute provided and was contained in an instruction dealing with matters upon which the trial court had charged. The refusal to give the instruction was held not to be error because of the nature of the statement and because of failure to direct the court's attention to the specific matter not covered by the Court.

In *Michael v. United States*, 7 Fed. (2d) 865 (C. C. A. 7, 1925) the trial court had given a requested charge,

similar to that requested herein by petitioner; but added that the instruction given did not alter the consideration they were to give to uncontradicted facts. The Circuit Court in discussing the question, said p. 866:

"When an accused declines to take the witness stand, he is doubtless entitled to a statement from the court to the effect that his failure to testify shall not be construed against him. There seems to be a difference of opinion among the judges and the bar as to whether such references to the accused's failure to testify helps or injures him before the jury. Some courts have gone so far as to criticize the trial judge for giving such an instruction in the absence of a request."

B. The charge given by the trial court relative to the defendant's election to testify, prejudiced the defendant.

The trial court's charge stated (R 332):

"It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony."

The trial court thus directly brought to the jury's attention the fact that some of the defendants did not testify. The court's comment on the effect to be given the testimony of a defendant who exercised the privilege left an unfavorable implication concerning a defendant who failed to exercise the privilege. If a defendant who testifies has an interest "which may seriously affect his credence," certainly the failure of a defendant to exercise that privilege will be regarded by the jury with severity.

In *Hersh v. United States*, 68 Fed. (2d) 799 (C. C. A. 9, 1934) the court charged that a defendant has the right not to testify but failed to charge, as requested, that in case of failure of a defendant to testify no unfavorable inference can be indulged in by the jury against the defendant for failure to testify. The court said, p. 807:

"The statute expressly provides that the defendant may on his own request, but not otherwise, be a competent witness 'and his failure to make such request shall not create any presumption against him.' (28 U. S. C. A. §632) During the examination of the witness Klein the court stated 'the jury merely wants to listen to the defendants and find out their explanations of these several things—I assume.' While this statement was not objected to at the time and no exception reserved thereto, because of it defendant Hersh was entitled to have the jury instructed, as requested, that the failure of the witness to take the stand should not count against him. This error was prejudicial as to Hersh."

Here, because of the court's own charge, petitioner was placed in an unfavorable light. The prejudice to petitioner could be removed only by giving the requested charge. In view of the fact that the principal evidence against petitioner was given by Mauro, an accomplice; that Mauro accused petitioner and one, Marzano, alias Don Alphonso, of being his partners in a conspiracy to deal in narcotics; and that Marzano testified and denied Mauro's story, the extent of prejudice to the petitioner cannot be determined. It is important to note that on almost the same evidence the jury acquitted Marzano, who testified, but convicted Bruno who did not exercise the same privilege. Under the circumstances the requested charge should have been given to minimize prejudice as much as possible. *Gold v. United States*, 102 Fed. (2d) 350, 352 (C. C. A. 3, 1939).

The argument on this point contained in *Swenzel v. United States*, 22 Fed. (2d) 280 (C. C. A. 2, 1927) is

based on statements that, *in the absence of a request by defendant*, the better rule requires the court not to charge concerning a defendant's failure to testify. The argument of the *Swenzel* case overlooks the fact that the option is one which belongs to the defendant solely. The defendant is the one to determine how he will protect his interests. If he makes no request and wishes to waive the protection accorded him by the Constitution and the statute that is the defendant's right.

Where a defendant is the sole accused he may believe it more advantageous to omit any charge concerning his election to testify. That it may be less prejudicial to a defendant under one set of circumstances to omit the charge does not remove the prejudice which may exist under different circumstances. In the instant case the petitioner was prejudiced and should have been granted the requested instruction.

The reasoning in the *Swenzel* case ignored the fact that, as in the instant case, only part of the law contained in 28 U. S. Code, §632 was charged. The court having charged part of the law, that a defendant has the privilege of testifying if he so elects, it was manifestly unfair to refuse the request to charge containing the balance of the act, that no presumption arises from non-exercise of the privilege.

II.

Variance existed between the indictment and the proof offered, which affected the substantial rights of the petitioner.

Motions to dismiss the indictment (R 273) and to direct a verdict of acquittal (R 322) were made by petitioner on the ground that variance existed between the indictment and the proof offered, which prejudiced petitioner's rights. The indictment (R 7-16) charge eighty-eight defendants with conspiring to violate United States

laws dealing with the importation, and payment of duties and taxes on narcotics. It charged that narcotics were smuggled into the Port of New York aboard transatlantic boats, then taken to a point in Manhattan, in the City and State of New York; that they were then distributed, transported and sold in Manhattan; in Brooklyn, New York, in New Orleans, Louisiana; in several cities in Texas.

The proof failed to reveal a concert of action or common agreement underlying a single conspiracy. The proof supported a charge that numerous persons and groups of persons were engaged in the commission of similar crimes; *i. e.*, violation of the laws relating to narcotics. Each of the several groups acted independently of the others; each transaction among the independent groups was consummated on a cash basis and the exchange of money for drugs was the sole link between such groups.

The Caputo group of smugglers through Ignaro, as middleman, sold narcotics to the Mauro group until the end of 1936, when the Mauro group terminated its existence (R 61, 71-73). The Mauro group resold the narcotics to various individuals (R 48, 49). Mauro had some transactions with one, Cellentano, involving narcotics which the latter brought in from Canada (R 35, 36, 51, 52).

When Ignaro stopped dealing with the Mauro group, he entered into a partnership with Ruppolo, Carrerria and Papa, who purchased drugs from the Caputos and Vencileoni, two unconnected smuggling rings (R 79, 89, 90, 91, 117, 118).

The Ignaro group then resold to various individuals or groups of persons (R 74-78, 80, 81, 82-84, 86, 87). Gentile, one of the purchasers dealing with the Ignaro group, in turn resold narcotics to others in Texas and Louisiana (p. 4, *supra*). The evidence shows a complete lack of concerted action, necessary to support the government theory of a single, widespread conspiracy. Neither of the smuggling groups had any interest in or knowledge of the other. After the smugglers made a sale to the

Ignaro group, they had no interest in any further proceedings. Each sale was a single exchange paid for in cash. The middlemen, the Ignaro group, received no pay from the smugglers for distributing the contraband, nor did they share in the smugglers' receipts. The middlemen made a profit from the turnover, or resale of the contraband.

The same analysis holds true for the relationship between the middlemen and the various groups of retailers. The only transactions between them were the sales of narcotics. The retailers and the middlemen had no interest of any kind in each other, outside the particular sales made. It is important to note that the Mauro group (of which petitioner was allegedly a member) terminated its existence and could obtain no more narcotics in December, 1936 (R 61, 71, 72), whereas the middlemen continued their transactions until the time of their arrest in May, 1937 (R 31, 32). The various groups of retailers in the west were dealing in narcotics until their apprehension in October, 1937 (R 177).

Each of the individuals in a group no doubt was engaged in a conspiracy to violate the law. The evidence showed that the groups in Texas and Louisiana worked together to such an extent that a common purpose could be inferred. However, so far as petitioner is concerned, the evidence showed no more than sales by Ignaro to the Mauro group (of which petitioner was allegedly a member) and sales by the Mauro group to various individuals (R 48, 49, 67-70).

The Supreme Court has held that there can be no conspiracy between a buyer and a seller unless some element is present, other than the sale itself, which does not require the agreement of two persons for its completion *United States v. Katz*, 271 U. S. 354, 355 (1925). No such element is revealed by the evidence relating to the Mauro group.

Respondent attempts to distinguish the *Katz* case on the ground that the rule therein applies only to a single

sale by one person to another. This contention ignores the basis of the rule which is that the concert of action necessary as an element of a substantive offense cannot be made the essence of a charge of conspiracy. In *Gebardi v. United States*, 287 U. S. 112 (1932), the court, discussing whether or not a man and woman could be charged with conspiracy to violate the Mann Act, stated that where the woman acquiesced in the forbidden transportation, the case fell within those decisions which hold that (p. 122):

“ * * * where it is impossible under any circumstances to commit the substantive offense without co-operative action, the preliminary agreement between the same parties to commit the offense is not an indictable conspiracy either at common law, *Shannon and Nugent v. Commonwealth*, 14 Pa. St. 226; *Miles v. State*, 58 Ala. 390; cf. *State v. Law*, 189 Iowa 910; 179 N. W. 145; see *State, ex rel. Durner v. Huegin*, 110 Wis. 189, 243; 85 N. W. 1046, or under the federal statute. See *United States v. Katz*, 271 U. S. 354, 355; *Norris v. United States*, 34 F. (2d) 839, 841, reversed on other grounds, 281 U. S. 619; *United States v. Dietrich*, 126 Fed. 664, 667.”

In the instant case the only action of the Mauro group was to purchase narcotics from Ignaro. The concert of action which occurred was only that attendant to a sale. The number of buyers and sellers on each side, or the number of sales do not alter the legal principle that the agreement to make the sale, without more, cannot be made the basis of a conspiracy charge.

The fact that the Mauro group resold the narcotics does not affect the principle. Another substantive offense has been committed but nothing is added to warrant the conclusion that these acts were part of a general continuing conspiracy. Successive sales do not link the successive buyers and sellers into a conspiracy. *United States v. Peoni*, 100 Fed. (2d) 401, 403 (C. C. A. 2, 1938).

In the instant case the Mauro group were engaged in a separate conspiracy to deal in narcotics. The evidence revealed numerous other separate conspiracies. It is true that the evidence revealed a common purpose to traffic in narcotics. This should not be confused with, and does not necessarily constitute co-operative action towards a common purpose in which the defendants have a continued interest. The latter circumstances only should give rise to a charge of conspiracy.

Where variance exists between the indictment and proof this court has held that it is material only if it affects the substantial rights of the accused. *Berger v. United States*, 295 U. S. 78, 82 (1934). Although this court reversed the Circuit Court (*United States v. Berger*, 73 Fed. [2d] 278 [C. C. A. 2, 1934]), it affirmed the lower court on the question of the effect of variance. The Circuit Court stated, p. 280:

"The materiality of a variance does not depend upon the degree of its logical perversity, but upon how far it throws confusion into the trial and makes it likely to miscarry. Does it surprise the accused by calling upon him to meet a charge for which he is not prepared? Will it allow the production of evidence not competent or material to the crime he has committed, though admissible against another defendant tried at the same time?"

In the instant case, the trial continued for a month. The jury heard seventy-seven witnesses. Eighty-eight defendants were named in the indictment. Fifteen of the defendants had their cases submitted to the jury. These facts are a clear indication of the difficult task presented to the jury in this case.

About seven different conspiracies are indicated in the testimony; the Caputos (R 79), Vencileoni and his assistants (R 89, 90, 91, 117, 118), Ignaro and his group (R 31, 32, 71-73, 103), Mauro, Röss, Marzano and petitioner (R. 48, 61, 71-73), Mauro and Cellentano (R 35,

36, 37, 51, 52), Vaccaro and his group (R 71, 72, 76, 77, 78), Gentile and his groups in Louisiana and Texas (R 86, 93, 149, 150, 155, 158, 159, 166, 167, 184, 185, 190, 191, 192, 210, 211). In addition numerous individuals were named in the indictment and mentioned at the trial who only had isolated transactions with some of the other defendants, unrelated to the conspiracy charged. Such were Di Marzo (R 109); Casesa (R 181-183); Louis King (R 82-84); Visco (R 82-84) and Fitch (R 227, 228).

The jury had to consider numerous transactions, over a period of several years, taking place in several states. A great deal of evidence was introduced of other criminal activities of the other defendants, such as prostitution (R 153, 216, 224); loan shark dealings (R 70, 71, 97, 98), fraud (R 33, 45, 46, 109), and general crookedness [hijacking (R. 89, 90, 101, 102, 128) gambling (R 87, 96, 97) dishonesty (R 88, 183)].

The degree of confusion to which the jury was subjected cannot be estimated. The possibility of error was greatly increased by the nature of the trial. The trial court's submission of the case to the jury on the basis of a single continuing conspiracy was highly prejudicial to petitioner and, under the circumstances, deprived him of a fair consideration of his case.

The evidence against petitioner was not so clear and substantial that it was impossible for a jury to acquit him. The trial court should have granted petitioner's motion to dismiss at the end of the government's case and the motion for a direction of acquittal at the end of the whole case.

III.

The judgment of the Circuit Court should be reversed.

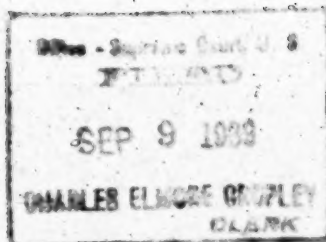
Respectfully submitted,

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[6216]

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No. 300

In the Supreme Court of the United States

OCTOBER TERM, 1939

JERRY BRUNO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 417-421) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered July 20, 1939 (R. 422). The petition for a writ of certiorari was filed August 18, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the refusal of the trial court to charge that no presumption should be raised against petitioner, because of his failure to testify, constituted reversible error.

2. Whether there was a fatal variance between the conspiracy charged in the indictment and the proof at the trial.

3. Whether the admission in evidence of an intercepted intrastate telephone conversation was prejudicial error where it was used merely to corroborate the testimony of a witness.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 12-13.

STATEMENT

On December 6, 1937, the petitioner and 87 others were indicted for conspiring to import, sell, transport, and conceal narcotics (R. 7-16). The petitioner and 14 others were tried together, and on June 2, 1938, the petitioner and some of the others were convicted (R. 345). He was on the same day sentenced to two years' imprisonment and fined \$5,000 (R. 5). The petitioner and another appealed to the Circuit Court of Appeals for the Second Circuit, where the judgment as to the petitioner was affirmed (R. 421).

The testimony of narcotic agents, informers, and some of the defendants who had pleaded guilty,

showed that one group of the conspirators, whom the court below described as "middlemen" (R. 417) secured the narcotics from a group of the conspirators who were smugglers (R. 75, 78, 122-133). The middlemen (R. 71, 72) sold the narcotics to two groups of the conspirators who were retailers—a local group, of which petitioner was one (R. 71), and another group which distributed the narcotics in Texas and Louisiana (R. 148-151, 154, 155). There is evidence that the petitioner shared in the profits (R. 49, 62) and was active in the business (R. 26, 30-31, 36-37, 48-49, 52, 110, 113).

ARGUMENT

I

The petitioner, citing U. S. C., Title 28, Section 632, *infra*, p. 13, first contends that the trial court committed reversible error in refusing to give the following charge requested by the petitioner (R. 345, 398, 407):

The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussion or deliberations of the jury in any manner.

We submit that the refusal to charge as requested was not prejudicial error. The court had

instructed the jury that a defendant is presumed innocent until proved guilty (R. 330) ; that the burden of proving guilt of a defendant beyond a reasonable doubt rests upon the Government and must be sustained throughout the trial (R. 330) ; and that (R. 332) :

It is the privilege of a defendant to testify as a witness if, and only when, he so elects ; and when he does testify his credibility is to be determined in the light of his interest, ~~which~~ usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony.

Under these instructions the presumption of innocence could not be affected by the exercise of petitioner's right not to testify.

In the instant case, some of the defendants elected to testify while the petitioner and others did not. In view of this circumstance, it is at least doubtful whether the giving of the requested charge, thus emphasizing the fact that some of the defendants did not testify, might not have prejudiced, rather than benefited the petitioner, who had not taken the stand. Thus, in *Swenzel v. United States*, 22 F. (2d) 280 (C. C. A. 2d), one Bindel and one Swenzel were prosecuted for unlawfully manufacturing beer. Swenzel took the stand. Bindel did not. A charge similar to that in the instant case was given, but a requested charge that Bindel's failure to take

the stand did not create any presumption against him was refused. The court ruled (p. 282):

Undoubtedly to say anything about the failure of a defendant to testify tends to keep that prejudicial consideration before the jury. If it is better, as this court has said, not to mention it unless requested, how can it be error not to deal with it, even if requested? * * * It is at least problematical whether mentioning Bindel's right not to take the stand would not have impressed upon the jury a comparison between him and Swenzel, when as matters stood Swenzel might have been regarded as covering the ground for both defendants, so that no further testimony was necessary.

It may be noted that, in other cases, defendants have contended that it is reversible error, in the absence of a request by the defendant, to instruct the jury that no presumption is to be drawn from the failure of the defendant to testify.¹ This contention was not sustained. However, the courts have said that, in the absence of a request by defendant, the better rule requires the court to be silent. *Becher v. United States*, 5 F. (2d) 45 (C. C. A. 2d), certiorari denied, 267 U. S. 602;

¹ *Hanish v. United States*, 227 Fed. 584 (C. C. A. 7th), certiorari denied, 239 U. S. 645; *Kreuzer v. United States*, 254 Fed. 34 (C. C. A. 8th), certiorari denied, 249 U. S. 603; *Rabilio v. United States*, 259 Fed. 101 (C. C. A. 6th); *Becher v. United States*, 5 F. (2d) 45 (C. C. A. 2d), certiorari denied, 267 U. S. 602. See also, *Nobile v. United States*, 284 Fed. 253 (C. C. A. 3d).

Kahn v. United States, 20 F. (2d) 782 (C. C. A. 6th). If the defendant's rights are better protected by silence in such a situation, then it is difficult to see how a mere request by the defendant to give the instruction can convert silence into prejudicial error. The rule that the defendant's rights are best protected by silence remains, and this is not changed by a request to instruct. Error, to require reversal, must be substantial (Sec. 269, Judicial Code, as amended, U. S. C., Title 28, Sec. 391), and the Federal courts will not presume prejudice where there is no likelihood that the refusal of a requested instruction could have wronged the accused. *Linn v. United States*, 251 Fed. 476 (C. C. A. 2d); *Kalmanson v. United States*, 287 Fed. 71 (C. C. A. 2d), certiorari denied, 261 U. S. 616.

In the cases cited by the petitioner (*Wilson v. United States*, 149 U. S. 60; *McKnight v. United States*, 115 Fed. 972 (C. C. A. 6th); and *Hersh v. United States*, 68 F. (2d) 799 (C. C. A. 9th), there were additional circumstances which, in conjunction with the refusal to charge as requested, constituted reversible error. In those cases attention was called, either by the judge or by the prosecutor, to the defendant's failure to testify or produce documents. No such situation is presented here. The court, in the instant case, made no comment on the petitioner's failure to testify.

For these reasons, we submit that the ruling of the court below was correct, and that it adequately

disposed of the petitioner's contention when it said (R. 420):

* * * The important thing to bear in mind is the probable futility of the instruction. * * * the real protection, and the only practical protection, is in preventing the prosecution from using it [defendant's failure to testify] as the basis of an inference of guilt. That is indeed a very real protection, for the prosecution's freedom would be a very deadly weapon; but the advantage derivable from an admonition by the judge that the jury shall make no such inference is wholly illusory; and only serves to put before them what will generally harm the accused, if it does anything at all.

II

The petitioner next contends that there was a fatal variance between the indictment and the proof. He argues that there were four distinct groups of conspirators, and that, therefore, four conspiracies were proved, whereas the indictment charged one general conspiracy to import, sell, transport, and conceal.

While it is quite possible for the importers to have conspired among themselves, the middlemen among themselves, and the retailers among themselves, it does not follow that there was not a general conspiracy with a common purpose to import and distribute narcotics. Such a conspiracy is charged in the indictment (R. 7-16). There was evidence from which the jury could and did find

that it existed: Ruppolo, a defendant who testified for the Government, and who was a middleman, was a partner of one Ignaro and others (R. 73). Ignaro, with the knowledge of Ruppolo, made the arrangements with the smugglers, Caputo and others (R. 78, 79). Ruppolo assisted in delivering narcotics to one Gentile (R. 80), the distributor to the southwest (R. 86, 89, 93), and to local retailers (R. 73). The petitioner was one of the local retailers (R. 71). Sometimes the receivers dealt directly with Gentile (R. 93) or with one Mauro (R. 35), partner of the petitioner (R. 49). This, and other evidence, shows a course of dealing in which the groups, though possible to be distinguished because of the parts they played, were nevertheless closely connected in the common enterprise. The common unlawful purpose, the establishment of a system of drug supply from steamship to addict, was established. This was recognized by the court below, which said (R. 418):

* * * the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers. That being true, a jury might have found that all the accused were embarked upon a venture, in all parts of which each was a participant and an abettor in the sense that the success of that part with which he was immediately concerned, was dependent upon the success of the whole.

It is settled that conspirators who are actuated by a common and understood purpose, though falling among themselves into distinct groups, may be prosecuted as participating in one general conspiracy. *Short v. United States*, 91 F. (2d) 614 (C. C. A. 4th); *Allen v. United States*, 4 F. (2d) 688 (C. C. A. 7th); *United States v. De Vasto*, 52 F. (2d) 26 (C. C. A. 2d); *Wyatt v. United States*, 23 F. (2d) 791 (C. C. A. 3d), certiorari denied, 277 U. S. 588; *Jezewski v. United States*, 13 F. (2d) 599 (C. C. A. 6th).

Petitioner relies upon *United States v. Katz*, 271 U. S. 354, and *United States v. Peoni*, 100 F. (2d) 401 (C. C. A. 2d). These cases hold either that an isolated sale by one person to another does not create a conspiracy to sell, or that a vendor who has no interest in the resale by his purchaser is not a conspirator with the second purchaser. Here each of the successive conspiring purchasers bought for resale, with knowledge on the part of the successive vendors that such resale was intended, as the drugs moved along a single channel of distribution.

The petitioner was without question a member of the conspiracy to buy, conceal, and sell narcotics. He is not prejudiced if the charge be that of a conspiracy including these objects, and also that of importing. The question is not whether there has been any variance in proof, but whether there has been such a variance as to affect the substantial right of the accused. *Berger v. United States*, 295

U. S. 78. Under the facts of this case, we submit, there has been no prejudice to the rights of the petitioner.

III

The petitioner finally contends that the trial court committed reversible error in admitting into evidence a single intercepted intrastate telephone communication. He asserts that under Section 605 of the Federal Communications Act of 1934 (*infra*, p. 12) and the decision of this Court in *Nardone v. United States*, 302 U. S. 379, intercepted intrastate, as well as interstate, communications are inadmissible in a Federal Court.

It is unnecessary to determine in this case whether Section 605 applies to intrastate telephone communications, since it is clear, we submit, that the admission of the intercepted communication, even if error, did not prejudice the rights of the petitioner. The telephone conversation (R. 360) was intercepted when one La Rose, a codefendant, made a call from the hotel room of narcotic agent Esch (R. 26, 360). Another narcotic agent, Groff, had installed a dictograph in the room as well as a tap on the telephone (R. 143-145). Agent Esch, who was present when the call was made, testified as to what he heard (R. 26-27). All that appears from the intercepted conversation, which was listened to and noted by Agent Groff, was an inquiry if "Jerry" was "there, on Broome Street," the response, and greetings (R. 360). The remain-

der of the conversation was in Italian and was not understood by either of the agents (R. 27, 146) nor was it translated in court (Govt. Ex. 25; R. 360). The intercepted conversation was merely corroborative of the testimony of Agent Esch that La Rose had called the petitioner, Jerry Bruno, and that they talked in Italian.

It therefore seems plain that the court below was clearly right in holding that the admission in the instant case of the intercepted telephone conversation, if error, was not of such a prejudicial character as to require a reversal of the conviction of the petitioner (R. 419). *United States v. Reed*, 96 F. (2d) 785 (C. C. A. 2d), certiorari denied, 305 U. S. 612; Section 269, Judicial Code (U. S. C., Title 28, Sec. 391).

CONCLUSION

The case was correctly decided by the Circuit Court of Appeals. There is presented no question of general importance and no conflict of decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

ROBERT H. JACKSON,
Solicitor General.

O. JOHN ROGGE,
Assistant Attorney General.

A. W. W. WOODCOCK,
Special Assistant to the Attorney General.

GEORGE F. KNEIP,
Attorney.

APPENDIX

U. S. C., Title 47, Section 605, provides:

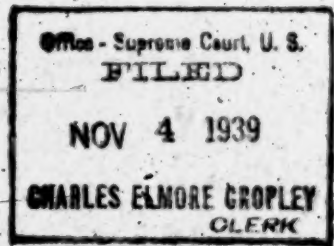
No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers, of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such

information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto. * * *

U. S. C., Title 28, Section 632, provides:

In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him. (Mar. 16, 1878, c. 37, 20 Stat. 30.)

FILE COPY



No. 300

In the Supreme Court of the United States

OCTOBER TERM, 1939

JERRY BRUNO, PETITIONER

v.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT**

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 417-421) is reported in 105 F. (2d) 921.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 20, 1939, (R. 422). The petition for a writ of certiorari was filed in this Court on August 18, 1939, and was granted on October 9, 1939 (R. 424). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the refusal of the trial court to charge that no presumption should be raised against petitioner, because of his failure to testify, constituted reversible error.

2. Whether the proof established not a single conspiracy, as charged in the indictment, but several separate conspiracies and, if so, whether the variance is fatal.

3. Whether an intercepted intrastate telephone conversation was properly admitted in evidence, and if not, whether its admission constituted prejudicial error.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment provides, in part:

No person * * * shall be compelled in any criminal case to be a witness against himself * * *

The Act of March 16, 1878, c. 37, 20 Stat. 30 (U. S. C., Title 28, Section 632), provides:

In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his

failure to make such request shall not create any presumption against him.

Section 605 of the Communications Act of 1934, c. 652, 48 Stat. 1064, 1103 (U. S. C., Title 47, Sec. 605) provides, so far as pertinent:

* * * no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; * * *

STATEMENT

On December 6, 1937, an indictment was returned in the United States District Court for the Southern District of New York, charging the petitioner and eighty-seven others with a conspiracy to import, sell, transport, and conceal narcotic drugs, contrary to law (R. 3, 7-16). The indictment alleged that it was a part of such conspiracy that the defendants would unlawfully import and cause to be imported large quantities of narcotic drugs into the Southern District of New York on various transatlantic steamships; that the defendants would arrange for the transportation of such narcotic drugs from the steamship piers or other places within the harbor of the Port of New York, after the drugs had been removed from the steamships, to points within the Borough of Manhattan; that, pursuant to a prearranged plan and scheme, certain of the defendants would receive the drugs

and communicate the fact of their arrival and receipt to other members of the conspiracy; and that certain of the defendants would conceal such narcotic drugs at places in the Southern District of New York pending their ultimate disposition, and that, in furtherance of the conspiracy, plans would be made and adopted for the sale, transportation, and distribution of such narcotic drugs to other defendants, some of whom were in the Southern District of New York, some in Brooklyn, and others in Louisiana and Texas (R. 12-13).

Of the eighty-eight defendants, twenty pleaded guilty before trial, the case was severed as to some of the defendants, and twenty stood trial. During the course of the trial one defendant pleaded guilty. Upon motion of the Government the indictment was dismissed as to two defendants and the trial court directed a verdict of acquittal as to two others. The jury returned a verdict of not guilty as to three defendants and convicted the other twelve, including the petitioner (Government's brief in the Circuit Court of Appeals, pp. 1-2, R. 5, 324-325, 345). Petitioner was sentenced to two years imprisonment and fined \$5,000 (R. 5). The petitioner and another appealed to the Circuit Court of Appeals for the Second Circuit where the judgment against the petitioner was unanimously affirmed (R. 421, 422).

The evidence relating to the nature and scope of the conspiracy and the participation of the peti-

tioner therein is summarized in the Appendix, *infra* pp. 39-47.

SUMMARY OF ARGUMENT

1. The trial court did not commit reversible error in failing to instruct the jury, in accordance with the petitioner's requested instruction No. 37, that his failure to testify created no presumption against him. U. S. C. Title 26, Sec. 632, upon which the petitioner relies, properly construed, prohibits only comment by court or counsel upon the silence of the accused which would create or tend to create a presumption against him. There was no such comment in the instant case, and in the absence of such comment the statute does not require the giving of an instruction such as that requested. Such an instruction could not overcome the natural inference which the jury might draw from the failure of an accused to take the stand.

Since the Fifth Amendment protects an accused only against compulsory self-incrimination and since it is a matter of choice whether an accused shall remain silent, his exercise of that choice cannot be said to involve such compulsory self-incrimination as to require, in the absence of comment, the giving of an instruction such as that sought by the petitioner.

2. As charged in the indictment, the evidence established a single conspiracy among the defendants to smuggle, transport, conceal and sell narcotic

drugs pursuant to a common plan whereby there was established a complete system for the flow of narcotics from steamship to addict. The fact that the conspirators may be divisible into groups because of the part each played in effectuating the common enterprise, does not render the conspiracy multiple. Nor is it material that some of the groups did not have immediate contact or communication with other groups. The repeated transactions, the volume of narcotics involved, and the circumstances under which the transactions were consummated, lead to no other conclusion than that each group, in playing its allotted part, was chargeable with knowledge of the common unlawful design.

However, even if the proof established more than one conspiracy, there is no support for the view that petitioner's substantial rights were in any wise adversely affected by the variance.

3. The admission of the intercepted intrastate telephone communication, of which petitioner complains, was not prohibited by Section 605 of the Communications Act of 1934. However, even if the communication was inadmissible under that section, its admission did not constitute prejudicial error because the communication was at most merely corroborative of direct testimony of a Government witness to the same effect.

ARGUMENT

I

THE REFUSAL OF PETITIONER'S REQUESTED INSTRUCTION
THAT HIS FAILURE TO TESTIFY CREATED NO PRESUMP-
TION AGAINST HIM WAS NOT REVERSIBLE ERROR

In the instant case a large number of defendants were on trial. Some of them elected to testify, while others, including the petitioner, did not. At the conclusion of the trial court's charge to the jury the following occurred (R. 345):

The COURT: There have been certain requests submitted to me, and as to any of those requests which I have not incorporated in my charge, the respective counsel may consider that those requests are rejected and an exception entered as to each one.

Are there any exceptions to the charge as delivered?

Mr. EDELSTEIN: On behalf of my two clients there is no exception to the charge as delivered. But I want to direct your Honor to certain charges which I think, if I direct your attention to them, your Honor will charge.

The COURT: What numbers are they, Mr. Edelstein?

Mr. EDELSTEIN: One is No. 37.

The COURT: I feel that I have already covered that.

Mr. EDELSTEIN: I respectfully except.

Requested instruction No. 37, which was not contained in the court's charge, was as follows (R. 398):

The failure of any defendant to take the witness stand and testify in his own behalf does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner¹.

The petitioner contends that by virtue of the Act of March 16, 1878, c. 37, 20 Stat. 30 (U. S. C., Title 28, Sec. 632), *supra*, pp. 2-3, the trial court committed reversible error in failing to give the requested instruction. This statute, after stating that a defendant in a criminal case shall, at his own request, be a competent witness, provides that his failure to be a witness "shall not create any presumption against him".

This Act was under consideration by this Court in *Wilson v. United States*, 149 U. S. 60. In that case the defendant did not take the stand and the prosecutor, in his summation, commented on that

¹ This requested instruction, although not printed in the bill of exceptions, was set forth in ground of appeal No. 10 (R. 398) contained in the petitioner's Notice of Appeal and also in assignment of error No. 10 (R. 407) of the petitioner's Assignment of Errors in the court below. It was stipulated between counsel for the parties (R. 424) that the requested instruction No. 37 is identical in language with the instruction set forth in the Notice of Appeal and Assignment of Errors.

fact and strongly intimated that it was a circumstance against the innocence of the defendant. In holding that the prosecutor's comments violated the statute, this Court, after summarizing the statute, said (p. 65):

To prevent such presumption being created, comment, especially hostile comment, upon such failure must necessarily be excluded from the jury. The minds of the jurors can only remain unaffected, from this circumstance by excluding all reference to it.²

And with reference to the insufficiency of the trial court's condemnation of the prosecutor's comments, this Court said (p. 67):

It should have said that the counsel is forbidden by the statute to make any comment which would create or tend to create a presumption against the defendant from his failure to testify.

There was thus established the rule that the statute prohibits any comment by either court or counsel upon the accused's failure to testify which would create a presumption against him, and that

² In *Reagan v. United States*, 157 U.S. 301, 304-305, this Court said: "Under that statute it is a matter of choice whether he [the accused] become a witness or not, and his failure to accept the privilege 'shall not create any presumption against him.' This forbids all comment in the presence of the jury upon his omission to testify." See also *McKnight v. United States*, 115 Fed. 972, 981-983 (C. C. A. 6th).

where such comment is made the trial court is required to instruct the jury that it is forbidden by the statute.

The petitioner, however, asserts that the trial court in its charge had brought to the jury's attention the petitioner's failure to testify and that, therefore, the failure to give the requested instruction was error. He bases this assertion upon the following language in the charge (R. 332):

It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony.'

It seems clear, however, that under the rule in the *Wilson* case the foregoing language cannot be said to have constituted such a comment by the trial court upon the petitioner's failure to testify as to require the giving of petitioner's requested instruction. The above instruction was clearly directed to those defendants who did take the stand and was the usual counterpart of the language immediately following it (R. 332) which cautioned the jury to weigh the testimony of accomplices with care. The very fact that neither the petitioner nor any of the

'The above charge follows closely the instruction suggested by this Court in *Reagan v. United States*, *supra*, at pp. 310-311.

other defendants who failed to take the stand excepted to that portion of the charge, and thus gave acquiescence to it, justifies the view that it was regarded as directed to those defendants who testified, with no thought on the part of the court, counsel, or the jury, that it focused attention upon the petitioner or other defendants who did not testify.*

The instant case, therefore, presents the question whether it is reversible error for the trial court, in the absence of any prior comment by court or counsel as to a defendant's failure to testify, to refuse, upon request, to charge the jury that such failure does not create any presumption against the defendant.

The court below was of the opinion that the petitioner was not prejudiced by the refusal of the requested instruction. It said (R. 420):

The statute is primarily intended to prevent the affirmative use of the accused's failure as an inference of guilt; and it would not be an error to refuse to charge the jury that they must not make that inference—at least it would not be except under some unusual circumstances that we cannot foresee. The important thing to bear in mind is the probable futility of the instruction. When an accused does not take the stand, every-

* In *Wilson v. United States*, *supra*; *McKnight v. United States*, *supra*, and *Hersh v. United States*, 68 F. (2d), 799 (C. C. A. 9th), cited by the petitioner, it is clear there was adverse comment by either court or counsel upon the failure of the accused to testify.

body knows that he fears to do so, for a man will not forego anything that may exculpate him. Sometimes no doubt he may merely be afraid that he cannot get out the truth on the stand, but that is very seldom. Ordinarily it is because he fears the disclosure which will result. Everybody knows this, and nobody can fail to make the inference, if he thinks about it at all; the accused's only safety is in having his failure kept as much as possible in the background. Hence the real protection, and the only practical protection, is in preventing the prosecution from using it as the basis of an inference of guilt. That is indeed a very real protection, for the prosecution's freedom would be a very deadly weapon; but the advantage derivable from an admonition by the judge that the jury shall make no such inference is wholly illusory; and only serves to put before them what will generally harm the accused, if it does anything at all.

The same court, in the earlier case of *Swenzel v. United States*, 22 F. (2d) 280 (C. C. A. 2d), had expressed a like view under circumstances substantially identical with those in the instant case.*

* In holding that the refusal of the requested instruction did not require reversal, the court said (p. 282): "Undoubtedly to say anything about the failure of a defendant to testify tends to keep that prejudicial consideration before the jury. If it is better, as this court has said, not to mention it unless requested, how can it be error not to deal with it, even if requested? It would seem strange that the request of a defendant, or his counsel, could make a charge

A careful search among the Federal decisions upon the subject has failed to disclose a single case in which, in the absence of any comment on the failure of the defendant to testify, a conviction was reversed for refusal of the trial court, upon request, to give an instruction similar to that requested in the instant case.

In *Stout v. United States*, 227 Fed. 799, 803 (C. C. A. 8th), the court assumed *obiter* and without citing any authority that a defendant, upon request, was entitled to an affirmative instruction on the subject even in the absence of wrongful comment. It held, however, that since nothing occurred during the trial that required correction by the trial court on its own motion, and since the requested instruction did not sufficiently direct the court's attention to the subject matter on which a charge was desired, a refusal to give the instruction was not reversible error.

In *Michael v. United States*, 7 F. (2d) 865 (C. C. A. 7th), while the court, by way of *dictum*, assumed that a defendant was entitled to a requested instruction similar to that sought in the case at bar, it does not appear from the opinion whether there had been adverse comment upon the silence of the accused. It should be pointed

compulsory which a court holds it better practice in general not to give. * * * In other words, if Bindel chose to exercise his constitutional right and not to testify, it seems exceedingly doubtful whether his situation would not have been prejudiced in fact by acceding to the charge requested."

out, however, that the court plainly indicated its doubt respecting the efficacy and advisability of such an instruction by saying (pp. 866-867):

* * * There seems to be a difference of opinion among the judges and the bar as to whether such reference to the accused's failure to testify helps or injures him before the jury. Some courts have gone so far as to criticize the trial judge for giving such an instruction in the absence of a request.

* * * It is, we believe, impossible to remove entirely the effect of the failure of the accused to deny under oath charges preferred against him when opportunity for so doing arises.

Strong support for the view that, in the absence of adverse comment during the trial, a defendant failing to take the stand is not prejudiced by the refusal of an instruction such as was requested herein, can be found in the fact that in a number of cases defendants have contended, without success, that it was reversible error, in the absence of a request, to give such an instruction.*

It would be a strange result indeed if an instruction which many defendants have urged it was

* *Hanish v. United States*, 227 Fed. 584 (C. C. A. 7th), certiorari denied, 239 U. S. 645; *Kreyser v. United States*, 254 Fed. 34 (C. C. A. 8th), certiorari denied, 249 U. S. 603; *Robilio v. United States*, 259 Fed. 101 (C. C. A. 6th); *Becher v. United States*, 5 F. (2d) 45 (C. C. A. 2d), certiorari denied, 267 U. S. 602; *Kahn v. United States*, 20 F. (2d) 782 (C. C. A. 6th).

prejudicial to give when not requested, could acquire, by mere request, such a vital character that the refusal to give it constitutes reversible error. Furthermore, if, as the courts have said, the better rule requires the court, in the absence of a request by defendant, to say nothing on the point,¹ then it is difficult to see how a mere request to give the instruction can convert the court's silence into error. The rule that a defendant's rights are best protected by silence remains, and this is not changed by a request to instruct.

When this Court said, in the *Wilson* case, *supra* (p. 65), that "The minds of the jurors can only remain unaffected from this circumstance [accused's failure to testify] *by excluding all reference to it*", (italics ours), and in the *Reagan* case, *supra* (p. 305), that the statute "forbids all comment in the presence of the jury upon his [the defendant's] omission to testify," the Court was but expressing the logical view that the accused who does not testify is best protected, absent adverse comment, by absolute silence on the subject,² an objective, we submit, which is more effectively accomplished by excluding reference to the matter

¹ *Becher v. United States, supra; Kahn v. United States, supra.*

² The *desideratum* of silence was not in any wise impaired in the instant case through the ruling of the trial court on the request to instruct since the substance of the requested instruction was not read orally in the presence of the jury (see p. 7 *supra*).

even in the court's charge. Thus in several states the statutes, in the absence of comment, have been construed as forbidding, with or without request, reference by the trial judge in his charge to the silence of the accused.*

* *Tines v. Commonwealth*, 25 Ky. Law Rep. 1233; *Hanks v. Commonwealth*, 248 Ky. 203; *State v. Pearce*, 56 Minn. 226; *State v. Long*, 324 Mo. 205; *Mason v. State*, 53 Okla. Cr. R. 76; *Thompson v. State*, 88 Tex. Cr. 29; *Kinney v. State*, 36 Wyo. 466. Cf. *State v. Ford*, 109 Conn. 490; *Tucker v. State*, 29 Ga. App. 221.

In approximately 42 States there exist statutes, which in varying phraseology, prohibit any inference to be drawn from an accused's failure to testify (See *Wigmore on Evidence* (2d Ed.), Sec. 488, Note 2). These statutes fall into three general categories: They provide either (1) that the failure of the defendant to testify shall not create any presumption against him, (2) that such failure shall not be the subject of comment by counsel or by either court or counsel, or (3) contain both such provisions. (See 31 Mich. L. Rev. 40-43; *Wigmore on Evidence*, 1934 Supp., Sec. 2272, Note 2.) In Indiana (Burns Ann. Stat. 1926, Sec. 2267), Nevada (Rev. Laws 1912, Sec. 7161), and Washington (Comp. St. 1922, Sec. 2148), the statutes specifically require the trial judge, upon request, to instruct the jury in accordance with the statute.

In England, the Criminal Evidence Act of 1898, Sec. 1 (St. 61 & 62, Vict. c. 36), provides that the accused's failure to give evidence "shall not be made the subject of any comment by the prosecution." It was immediately decided that the statute did not prevent the judge from commenting on the accused's failure to testify. *R. v. Rhodes*, 1 Q. B. 77, 83 (1899); Cf. *The King v. Parker*, 1 K. B. 850 (1933).

As a necessary result of the difference in the language of the various state statutes, there has arisen a difference of view in respect of the necessity or propriety of referring, by instruction, to the defendant's silence in the

While there may be some difference of opinion as to whether an instruction such as was sought in the present case, aids or injures the accused before the jury, there is almost universal agreement in the view that it is inevitable that the jury will, despite the instruction, draw an adverse inference from the accused's failure to testify.¹⁰ In *Raffel v. United States*, 271 U. S. 494, 499, this Court said:

We need not close our eyes to the fact that every person accused of crime is under some pressure to testify, lest the jury, despite carefully framed instructions, draw an unfavorable inference from his silence.

And in respect of the probable futility of an instruction, Professor Wigmore has said: ¹¹

absence of comment. * Thus, in apparent contrast with the decisions cited in the beginning of this note, several state courts have held that it is proper for the court to instruct the jury upon request, and that the refusal to do so is error (*Cox v. State*, 173 Ark. 1115; *People v. Greben*, 352 Ill. 582; *State v. Landry*, 85 Me. 95; *People v. Provost*, 144 Mich. 17; *Funches v. State*, 125 Miss. 140; *State v. Walker*, 94 W. Va. 691). On the other hand, as indicative of the view that the giving of an instruction on the subject of the accused's silence is not of vital necessity, are the unanimous decisions of the state courts that the failure to instruct, without request, is not error (*Bradley v. State*, 35 Ariz. 420; *People v. Mitsunaga*, 91 Cal. App. 298; *State v. Williams*, 90 Conn. 126; *State v. Reid*, 200 Iowa 892; *State v. Younger*, 70 Kan. 226; *State v. Lesh*, 27 N. D. 165; *Bosley v. State*, 69 Tex. Cr. 100; *State v. Comer*, 170 Wash. 257).

¹⁰ See 31 Mich. L. R. 226, 229; *Michael v. United States*, *supra*; Opinion below (R. 420).

¹¹ Wigmore on Evidence (2d Ed.), Sec. 2272, p. 901.

Nor is it proper to go so far as to *instruct the jury* (even when no comment has been made) to disregard the inference; it is well enough to contrive artificial fictions for use by lawyers, but to attempt to enlist the layman in the process of nullifying his own reasoning powers is merely futile, and tends towards confusion and a disrespect for the law's reasonableness.

Since, in the very instruction not to draw inferences from the silence of the accused, the fact is brought to the minds of the jury that the accused may, if he will, testify in his own behalf, thus only adding to the inevitable inference by the jury, it is difficult to see how the refusal to instruct the jury in any way adversely affects the substantial rights of the accused who is silent.

As illustrated by numerous decisions,¹² the statute is primarily intended to prevent the use of accused's failure to testify as an inference of guilt by prohibiting both court and prosecutor from commenting, in the presence of the jury, on that fact. The accused is only protected from having the fact of his silence being used, to his prejudice, as evidence of his guilt, in violation of his right to be silent until his guilt is established beyond a reasonable doubt. There is nothing in the statute

¹² *Wilson v. United States*, *supra*; *Reagan v. United States*, *supra*; *McKnight v. United States*, *supra*; *Morrison v. United States*, 6 F. (2d) 809, 811 (C. C. A. 8th); *Nobile v. United States*, 284 Fed. 253, 256 (C. C. A. 3rd).

which protects him from an unfavorable inference which the jury might naturally draw from the exercise of his privilege to remain silent.

Frequently defendants who elected not to testify have urged that comment by the court or the prosecutor to the effect that certain testimony on the part of the Government was uncontradicted or that the defendant had failed to produce testimony to disprove material facts, constituted a comment upon the failure of accused to testify in violation of the statute. This contention has been uniformly rejected.¹³ In the light of these decisions, it would seem to be an unwarranted extension of the statutory protection to hold that the statute is violated because the trial court refuses to call the jury's attention to the defendant's silence by an instruction that such silence shall create no presumption against him.

In the final analysis, the statute was designed to prevent the accused, by reason of his failure to testify, from being deprived of the presumption of innocence to which by law he is entitled.¹⁴ And such presumption, we submit, could only be impaired by a comment by court or counsel "which would create or tend to create a presumption

¹³ *Rinella v. United States*, 60 F. (2d) 216 (C. C. A. 7th); *Jenkins v. United States*, 58 F. (2d) 556 (C. C. A. 4th), certiorari denied 287 U. S. 622; *Slakoff v. United States*, 8 F. (2d) 9 (C. C. A. 3d); *Morrison v. United States*, 6 F. (2d) 802, 811 (C. C. A. 8th), and cases there cited.

¹⁴ *Reagan v. United States*, *supra*, at p. 66.

against the defendant from his failure to testify.”¹⁵ In the instant case the trial court instructed the jury that a defendant is presumed innocent until his guilt is established beyond a reasonable doubt and that the burden of proving such guilt rests upon the Government and must be sustained throughout the trial (R. 330).¹⁶ Under this instruction the presumption of innocence could not be affected by the petitioner’s exercise of his right not to testify.

Nor is there any merit in the petitioner’s assertion that the constitutional privilege of an accused not to be compelled to be a witness against himself (Fifth Amendment) requires the giving of the instruction requested in the instant case. A constitutional provision which was adopted almost ninety years before the enactment of a statute which made an accused a competent witness in his own behalf but prohibited the creation of any presumption by reason of his silence, cannot reasonably be given a

¹⁵ *Wison v. United States*, *supra*, at p. 67.

¹⁶ The trial court instructed the jury as follows (R. 330): “Every defendant in a criminal case in this country is presumed at the outset to be innocent, and this presumption exists in his favor and abides with him for his proper protection until his guilt is established by the requisite measure of proof. This is true not only as respects the accusation as a whole, but also as respects every material element of it.

“The burden of proving guilt rests upon the Government and must be sustained by evidence which establishes guilt beyond a reasonable doubt. This burden rests upon the Government throughout the trial.”

construction broader than the statute. Indeed, the very fact that Congress, as well as the legislatures of at least forty-two states (see footnote 9, *supra*, p. 16), deemed it necessary to prohibit by statute the creation of any inference of guilt from, or hostile comment upon, the accused's failure to testify, negatives any such contention. While the constitutional safeguards against self-incrimination are for the benefit of those who do not wish to become witnesses in their own behalf,¹⁷ it does not follow that permitting the jury to draw a natural inference from the accused's silence violates his privilege against self-incrimination.¹⁸ We are aware of no decision of this or any other Federal court which enunciates such a doctrine, and the petitioner has cited none.

Mere self-incrimination is not prohibited by the Fifth Amendment. It is only when that incrimination becomes compulsory that the proscription of the Constitution becomes applicable.¹⁹ Since, under the statute, "it is a matter of choice whether he [the accused] become a witness or not",²⁰ his failure to exercise such choice cannot be said to involve

¹⁷ *Raffel v. United States*, *supra*, at p. 494.

¹⁸ See *State v. Colonese*, 108 Conn. 454, 464; *State v. Bartlett*, 55 Me. 200; *Commonwealth v. People's Express Co.* 201 Mass. 564.

¹⁹ Cf. *Vajtauer v. Comm'r of Immigration*, 273 U. S. 103, 113; *Thompson v. United States*, 10 F. (2d) 781, 784 (C. C. A. 7th); *Krotkiewicz v. United States*, 19 F. (2d) 421, 424-425 (C. C. A. 6th).

²⁰ *Reagan v. United States*, *supra*, at p. 305.

such compulsory self-incrimination as to require an instruction that no inference shall result because of the accused's election not to testify. Such a construction of the constitutional privilege against self-incrimination would permit the accused to use his silence as a sword rather than as a shield.

It is now the settled rule of Federal courts that where a defendant, who offers himself as a witness, fails to deny or explain incriminating circumstances when it is within his power to do so, such failure may not only be commented upon, but may be the basis of adverse inference and the jury may be instructed to that effect, all without infringement of the defendant's constitutional right not to be compelled to be a witness against himself.²¹ In view of this narrowing construction of the privilege against self-incrimination, it would, we submit, be inconsistent to hold that the privilege is violated because the trial court failed to inform the jury that a defendant's voluntary choice to remain silent should not be considered by the jury, particularly where, as in the instant case, no mention of the matter had theretofore been made by either court or counsel.

In this connection, the attention of this Court is directed to the modern trend toward a more realistic view of the subject of the failure of a defendant in a criminal case to testify in his own behalf

²¹ *Caminetti v. United States*, 242 U. S. 470, 492-495; *Raffel v. United States*, 271 U. S. 494, 497.

and the right of court and counsel to comment upon that fact. Thus the Constitution of Ohio²² provides that the failure of a defendant to testify may be considered by the court and jury and may be made the subject of comment by the prosecution. Likewise, in California the Constitution was recently amended to permit comment by court or counsel upon accused's failure to testify.²³ In Iowa, a statute prohibiting such comment²⁴ was repealed²⁵ and the right of the prosecution to comment upon accused's silence has been upheld.²⁶ In New Jersey, which has no constitutional provision against self-incrimination nor any statute on the subject of the effect of defendant's silence, the courts have held that comment may be made upon the failure of the defendant to testify.²⁷

As further evidence of the widespread view and growing demand that the refusal of a defendant in a criminal case to testify in his own behalf should not be a means of stultifying criminal prosecutions and permitting guilty persons to escape pun-

²² Art. I, Sec. 10, as amended Sept. 3, 1912.

²³ Cal. Const., Art. I, Sec. 13, as amended Nov. 6, 1934.

²⁴ Code 1927, Sec. 13,891.

²⁵ Act of March 28, 1929, 43 Gen. Acts, c. 269, p. 311.

²⁶ *State v. Stennett*, 220 Iowa 388. In South Dakota, however, a statute permitting the prosecutor to comment (Laws 1927, c. 93, p. 113) was held unconstitutional by the Supreme Court of that state in a three to two decision in *State v. Wolfe*, 64 S. D. 178.

²⁷ *Parker v. State*, 61 N. J. L. 308; *State v. Kisik*, 99 N. J. L. 385; Cf. *Twining v. New Jersey*, 211 U. S. 78, 90.

ishment, is the fact that the American Law Institute and the American Bar Association, after careful deliberation, both supported the proposition that court and counsel should be permitted to comment upon the accused's silence."

While the instant case, of course, does not involve any question as to whether court or counsel should be permitted to comment upon the failure of the defendant to testify (since no such com-

²⁸ In 1931 the American Law Institute adopted the following resolution: "The judge, the prosecuting attorney and counsel for the defense may comment on the fact that the defendant did not testify" (9 Proc. Am. L. Inst. 202, 218).

During the discussion of this subject before the American Law Institute, the following statement was attributed to the Chief Justice (while Secretary of State, in 1924): "It is clear that reversals because a prosecuting attorney has directed the attention of the jury to a circumstance which no intelligent person could help taking into consideration of his own accord should have no place in any well ordered system of criminal procedure" (See 9 Proc. Am. L. Inst. 215; *State v. Wolfe*, 64 S. D. 178, 190-191, *supra*).

Likewise, in 1931, the American Bar Association approved the following resolution: "That by law it should be permitted to the prosecution to comment to the jury on the fact that a defendant did not take the stand as a witness; and to the jury to draw the reasonable inferences." 56 A. B. A. Rep. 137-152. See also 59 A. B. A. Rept. 131-141 (1934).

The Attorney General's Conference on Crime, held in Washington in December 1934, made the following specific recommendation: "Adopting a rule permitting court and counsel to comment to the jury on the failure of the defendant in a criminal case to testify in his own behalf." (See "Proceedings of the Attorney General's Conference on Crime," p. 454.)

ment was made), the foregoing is mentioned merely as fortifying the Government's argument that it is reasonable to say that a defendant remaining silent is not prejudiced, in the absence of prior comment on the subject, by the failure of a trial court to charge that the jury must avoid drawing any inference from the defendant's silence.

We submit, therefore, that the Circuit Court of Appeals correctly held that the refusal of the trial court to give the requested charge was not prejudicial error.

II

THE PROOF ESTABLISHED A SINGLE CONSPIRACY AS CHARGED IN THE INDICTMENT. BUT EVEN IF THE PROOF SHOWED SEVERAL SEPARATE CONSPIRACIES, THE VARIANCE WAS NOT FATAL

The petitioner contends that the Government proved several distinct and separate conspiracies, involving different groups of defendants, instead of proving the single conspiracy charged in the indictment, and that he was prejudiced by this alleged variance. We submit that the evidence established merely a single conspiracy as charged in the indictment but that if it did show more than one conspiracy the variance was not fatal.

While the trial court, in accordance with its ruling upon the defendant's motion for directed verdict (R. 273), instructed the jury that it was of the opinion that there was substantial evidence tending to sustain the Government's position that there was but a single conspiracy (R. 334), it specifically charged the jury that the prosecution must fail if the evidence showed that there were several independent or separate conspiracies and it also cautioned the jury "to make a very careful analysis of the evidence for the purpose of determining whether each and every one of the 15 defendants on trial are inseparable parties to that conspiracy" (R. 334). By these instructions the jury was obviously called upon to determine whether the proof established a single conspiracy with which each defendant was connected and was precluded from returning a verdict of guilty as against any defendant unless convinced that a single conspiracy was proved. Its verdict of guilty makes it clear that the jury reached the conclusion that the evidence in fact established but a single conspiracy of which the petitioner was a member. The Circuit Court of Appeals, after analyzing the evidence, also reached the conclusion that the proof showed a single conspiracy (R. 417-418). Since the probative sufficiency of the testimony has the support of the District Court (in which is included the verdict of the jury) and of the Circuit Court of Appeals, it is obvious that, as this Court said, in

Delaney v. United States, 263 U. S. 586, 590, "it would take something more than ingenious criticism to bring even into question that concurrence or to detract from its assuring strength * * *". On the basis of the present record the petitioner's criticism must fall.

The evidence, which is summarized at length in the Appendix (*infra*, pp. 39-47), clearly warranted the jury in finding, as was said by the Circuit Court of Appeals (R. 417):

that there had existed over a substantial period of time a conspiracy embracing a great number of persons, whose object was to smuggle narcotics into the Port of New York and distribute them to addicts both in this city and in Texas and Louisiana. This required the cooperation of four groups of persons; the smugglers who imported the drugs; the middlemen who paid the smugglers and distributed to retailers; and two groups of retailers—one in New York and one in Texas and Louisiana—who supplied the addicts."

The petitioner contends, however, that, since, as the Circuit Court of Appeals pointed out (R. 418), "The evidence did not disclose any cooperation or communication between the smugglers and either group of retailers, or between the two groups of retailers themselves," the Government failed to es-

"The various groups of conspirators will be referred to herein by the same names as were applied by the Circuit Court of Appeals, i. e., smugglers, middlemen, New York retailers, and Texas and Louisiana retailers.

tablish the single conspiracy charged in the indictment, i. e., a general conspiracy to import, transport, conceal and sell narcotic drugs. His position is that the smugglers' interest ceased upon the sale of the narcotics to the middlemen and that the latter's interest terminated when they sold the contraband to the two groups of retailers.

We submit, however, that the evidence discloses not a series of isolated sales of narcotics but a continuous course of dealings and repeated transactions between the various groups in large quantities of narcotics under such circumstances as would warrant the conclusion that the dealings were pursuant to a single plan or scheme to provide a complete system for the flow of narcotics from steamship to addict. The various groups, though possibly distinguishable because of the part which each played, were nevertheless essential to the success of the common enterprise. Thus, the smugglers effectuated the unlawful importation, the middlemen supplied the necessary contact between the smugglers and the two groups of retailers, and the latter were responsible for the ultimate disposition and sale to addicts. Moreover, as was said by the Circuit Court of Appeals (R. 418):

the smugglers knew that the middlemen must sell to retailers, and the retailers knew that the middlemen must buy of importers of one sort or another. Thus the conspirators at one end of the chain knew that the

unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers. That being true, a jury might have found that all the accused were embarked upon a venture, in all parts of which each was a participant and an abettor in the sense that the success of that part with which he was immediately concerned, was dependent upon the success of the whole.

Since it is apparent that each group was essential to the accomplishment of the common purpose and was chargeable with knowledge that the traffic in which it was engaged could not be carried on without cooperation of others, it is wholly immaterial that the smuggling group may not have had direct connection with the two groups of retailers or that there was no immediate contact or communication between the two latter groups. It is settled that one who knowingly cooperates to further the object of an unlawful enterprise becomes a party thereto, and this regardless of whether all the conspirators are acquainted with each other or had direct contact with all the others." A conspirator need not understand the entire scope of the conspiracy and his knowledge may be limited as to its extent and details, it being sufficient if one

²² *Allen v. United States*, 4 F. (2d) 688, 691 (C. C. A. 7th), certiorari denied *sub nom. Mullen v. United States*, 267 U. S. 598; *Booth v. United States*, 57 F. (2d) 192, 197 (C. C. A. 10th); *Martin v. United States*, 100 F. (2d) 490, 496 (C. C. A. 10th), certiorari denied 306 U. S. 649.

becomes a member of a conspiracy knowing its purposes in a general way and acts with his fellow conspirators to a greater or lesser extent."

The mere fact that conspirators individually or in groups perform different tasks directed towards a common end does not split up a conspiracy into several different conspiracies." The courts have frequently held that a single conspiracy existed in cases where different groups of defendants, some of them unrelated to others, acted in effectuating a common unlawful purpose.

In *Jezewski v. United States*, 13 F. (2d) 599 (C. C. A. 6th), certiorari denied 273 U. S. 735, the proof revealed that the defendants in a liquor conspiracy case were divided into several groups—a "brewery" group composed of the persons who operated a brewery; a "distributing" group; an "official" group composed of city officials who were paid to furnish protection; and a "saloonkeeper" group which sold the beer to consumers. The court held that the evidence, which showed that the distributors purchased non-dealcoholized beer from the brewers, arranged for its distribution to the saloonkeepers, and promised the latter police pro-

²¹ *McDonnell v. United States*, 19 F. (2d) 801, 803 (C. C. A. 1st), certiorari denied 275 U. S. 551; *Galatas v. United States*, 80 F. (2d) 15, 23 (C. C. A. 8th), certiorari denied 297 U. S. 711; *Craig v. United States*, 81 F. (2d) 816, 822 (C. C. A. 9th), certiorari denied 298 U. S. 690; *Marino v. United States*, 91 F. (2d) 691, 696 (C. C. A. 9th), certiorari denied *sub nom. Gullo v. United States*, 302 U. S. 764.

²² *Lefco v. United States*, 74 F. (2d) 66, 69 (C. C. A. 3d).

tection, supported the conviction of members of all four groups as co-conspirators. It said (p. 602) that it was unimportant whether the saloonkeepers or police officers knew where the distributors were obtaining the beer, or whether the manufacturers knew to whom the distributors were selling, or whether the several groups were all or in part strangers to each other, because "They were each and all engaged in a common unlawful purpose, and each and all contributed their part to the furtherance of the unlawful purpose of the continuing conspiracy initiated by these distributors, if they were not in fact originally parties thereto".

In *Rudner v. United States*, 281 Fed. 516 (C. C. A. 6th), the evidence showed that a group of defendants in Canton, Ohio, purchased liquor from two separate groups of defendants in Pittsburgh, Pennsylvania. No connection was shown between the two groups of defendants in Pittsburgh. The court held, however, that the evidence established a single conspiracy and that it was not important whether one group of the Pittsburgh dealers knew that the Canton group was also dealing with the other Pittsburgh dealers."

²² See also *Allen v. United States*, *supra*, p. 692; *Wyatt v. United States*, 23 F. (2d) 791, 792 (C. C. A. 3d); certiorari denied 277 U. S. 588; *Booth v. United States*, *supra*, p. 197; *Lefco v. United States*, *supra*, pp. 68-69; *Short v. United States*, 91 F. (2d) 614, 618 (C. C. A. 4th); *United States v. Anderson*, 101 F. (2d) 325, 330 (C. C. A. 7th), certiorari denied May 1, 1939, No. 775, October Term, 1938).

~~*Fee Hem v. United States*, 268 U. S. 178, 184;
U. S. C. Title 21, Sec. 174.~~

There can be no doubt that the New York retailers' group, of which the petitioner was admittedly a member, participated in the general conspiracy which the evidence established. The evidence discloses that this group had dealings with the middlemen relative to narcotic purchases (R. 71-72), and that even prior to the formation of the latter group a member thereof (defendant Ignaro) had been selling drugs to the petitioner and his partners, Mauro and Alfonso (R. 71, 117). In addition to purchasing narcotics from the middlemen, the New York retailers' group on one occasion sold 25 ounces of cocaine to the middlemen (R. 30-33, 52, 62, 92). One hundred seventy ounces of cocaine, as well as a quantity of opium, had been purchased by Mauro from the defendant Cellentano who had smuggled it into the United States from Canada. (R. 35, 36, 61). On one occasion, apparently prior to the formation of the New York retailers' group, Mauro and others, with the defendants Ruppolo and Liguorio acting as intermediaries, purchased \$3,000 worth of narcotics from the defendant John Caputo of the smugglers' group. These drugs were delivered to Mauro and others by Ruppolo at the headquarters of the New York retailers' group (R. 67-70, 106-107).

Further, it is clear that the New York retailers' group was formed for the express purpose of deal-

ing in smuggled narcotics and that the group knowingly acquired such narcotics. Mauro testified that when the partnership was formed the defendant Alfonso (alias Alfonse Manzana), a member of the group, was to supply the drugs which were to be brought "to him from Europe" (R. 49).

United States v. Katz, 271 U. S. 354 and *United States v. Peoni*, 100 F. (2d) 401 (C. C. A. 2d), relied upon by the petitioner, are not in point. In the *Katz* case this Court, by way of *dictum*, observed (p. 355) that an indictment of the buyer and seller for a conspiracy to make a single sale of liquor would be of doubtful validity. In the *Peoni* case, which involved the sale of counterfeit money, it was held that one who sold the money to another person, who in turn resold some of it to a third person, could not be made a party to a conspiracy with the third person to possess the money. The court below, which decided the case, distinguished it from the instant case on the ground that the original vendor of the money did not know that his buyer was to sell the bills to the third person, and had no interest in whether he did. As indicated by the court below the situation differs here where each buyer group bought for resale and each successive resale from group to group meant only that the drugs were moving along a single channel of distribution to the addict. A fair inference arises from the repeated transactions and quantities involved that the various groups realized that they

were furthering the common purpose of the enterprise by the parts they played."

However, even if it be assumed that there was a variance in the instant case in that the indictment charged one conspiracy and the proof established several, we submit that the variance was not fatal since the petitioner's substantial rights were not adversely affected thereby.

In *Berger v. United States*, 295 U. S. 78, which involved an admitted variance between the indictment and the proof, this Court held that under Section 269 of the Judicial Code," "The true inquiry * * * is not whether there has been a variance in proof, but whether there has been such a variance as to 'affect the substantial rights' of the accused." "

The alleged complexity of the issues involved, the

" See *Comerio v. United States*, 58 F. (2d) 557, 558 (C. C. A. 4th); *United States v. De Vasto*, 52 F. (2d) 26, 30-31 (C. C. A. 2d); *United States v. Engelsberg*, 51 F. (2d) 479, 480-481 (C. C. A. 3rd); *Anastess v. United States*, 22 F. (2d) 594, 595 (C. C. A. 7th).

" Section 269 of the Judicial Code, as amended (U. S. C., Title 28, Sec. 391), so far as pertinent, provides:

* * * On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.

" See also *Kopald-Quinn Co. v. United States*, 101 F. (2d) 628, 633 (C. C. A. 5th), certiorari denied May 15, 1939, No. 861, October Term, 1938; *Martin v. United States*, *supra*, pp. 494-495; *Marino v. United States*, *supra*, pp. 698-699; *Blumenthal v. United States*, 88 F. (2d) 522, 531-532 (C. C. A. 8th).

numerous witnesses heard, and the type of evidence admitted against defendants other than the petitioner³⁷ are the only respects in which the petitioner claims that he was prejudiced by the asserted variance. It is apparent, however, from the evidence that of the various activities alleged in the indictment to have been the objects of the conspiracy, i. e., smuggling, transporting, concealing and selling narcotics, the smugglers engaged in all of them and that the other three groups, including the New York retailers group, of which the petitioner was a member, engaged in all except smuggling. It is difficult to see how the petitioner and his group were in any wise prejudiced because as to other groups the evidence showed activities similar to those in which he and his group were admittedly engaged. So far as the evidence as to smuggling is concerned, this certainly could not have prejudiced the petitioner in the eyes of the jury since it is a matter of common knowledge that where, as in the instant case, narcotic traffic is engaged in upon a large scale, dependence must be had upon smuggling for the source of supply. Cf. *Yee Hem v. United States*, 268 U. S. 178, 184; U. S. C. Title 21, Sec. 174.

³⁷ Petitioner states (Pet. 14-15) that evidence was admitted relating to other defendants which was of a highly prejudicial character because it showed that these defendants were engaged in various illegal activities such as prostitution, loan shark dealings, fraud, thievery, and gambling. However, it should be noted that this evidence was generally elicited by defense counsel on cross-examination of Government witnesses. See, e. g., R. 33, 97-98, 153, 216, 224.

III

THE INTERCEPTED INTRASTATE TELEPHONE COMMUNICATION WAS PROPERLY ADMITTED IN EVIDENCE, BUT EVEN IF ITS ADMISSION WAS ERROR, THE PETITIONER WAS NOT PREJUDICED

The petitioner contends that the trial court erred in admitting in evidence an intercepted intrastate telephone communication for the reason that the admission of such communication was prohibited by Section 605 of the Communications Act of 1934 (*supra*, p. 3). He asserts that under that section intercepted intrastate, as well as interstate, telephone communications are inadmissible.

In its brief in the case of *Weiss et al. v. United States*, No. 42, present Term, which is shortly to be argued, the Government has contended that Section 605 does not apply to intrastate communications. Since the petitioner urges no other ground for inadmissibility, it follows that if the Government's contention is sustained in the *Weiss* case, the communication was properly admitted.

However, even if the communication was inadmissible under Section 605, we submit that its admission did not constitute prejudicial error.

The telephone conversation in question (included in Government's Exhibit 25, R. 360) was intercepted when one LaRose, a co-defendant, made a call from the hotel room of Narcotic Agent Esch, who was posing as a buyer of narcotics (R. 18-19,

26-27). Other narcotic agents had installed a tap on the telephone wire leading into Esch's room and the telephone conversation in issue was heard and taken down by one of the agents (R. 142-146). Assuming that the petitioner was the "Jerry" with whom the ^{LaRose} ~~petitioner~~ had the telephone conversation, all that the conversation disclosed was that, aside from the greetings, LaRose and Jerry had a talk in Italian which was not understood by the agents and which was not translated in court (R. 27, 146, 360).²² It appears, however, from the record that prior to the introduction of the telephone conversation Esch had testified that he had been trying to buy cocaine from certain of the defendants and that LaRose had told him that the cocaine was in the possession of the petitioner. Esch also had testified that following this conversation LaRose made the telephone call in controversy from Esch's hotel room to a restaurant in New York

²² This conversation (R. 360) was as follows:

"In (Dick)—Drydock 4-6753.

"Out (Man)—Hello?

"In—Hello! La Salla restaurant!

"Out—Yes.

"In—Is Jerry there, on Broome St., this is Dickie.

"Out—No. Wait awhile, I'll send somebody to call him.
(two minutes elapsed.)

"Out—(other man)—Hello!

"In—Hello, Jerry?

"Out—Yes.

"In—This is Dickie." (Remainder of conversation in Italian.)

City and asked for Jerry Bruno (R. 26-27). It is apparent, therefore, that the telephone conversation was merely corroborative of Esch's direct testimony. It consequently seems clear that the Circuit Court of Appeals was right in holding, particularly in view of the strong evidence of petitioner's guilt, that the intercepted telephone conversation, even if its admission was erroneous, was not of such a prejudicial character as to require reversal of the petitioner's conviction. See *United States v. Reed*, 96 F. (2d) 785 (C. C. A. 2d), certiorari denied, 305 U. S. 612; Section 269, Judicial Code (U. S. C. Title 28, sec. 391), *supra*, p. 34.

CONCLUSION

For the foregoing reasons we respectfully submit that the judgment below should be affirmed.

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NOVEMBER 1939.

APPENDIX

SUMMARY OF THE GOVERNMENT'S EVIDENCE

As was said by the Circuit Court of Appeals (R. 417) the conspiracy participated in by the petitioner and the other defendants required the cooperation of four groups of persons: The smugglers, who imported the drugs; the middlemen, who paid the smugglers and distributed the narcotics to retailers; and two groups of retailers, one in New York and one in Texas and Louisiana, who sold the drugs to addicts. The petitioner was a member of the group of New York retailers composed of the defendants Al Mauro, Don Alfonso, Willie Ross and the petitioner (R. 48, 56, 62). For the convenience of this Court we will summarize some of the more important evidence dealing with the conspiracy and the part which each of the four groups played therein, taking the group of which the petitioner was a member last.

The principal members of the smugglers' group were Francois (Frenchie) and Gennaro Caputo, alias Capperio, John Vencileoni, Jose Lago and one Pete (whose name is Sanpedro) (R. 79, 87-88, 121, 123-125). These persons imported narcotics into New York from Europe. "Frenchie" Caputo would go to Marseilles, France, and arrange for the purchase of narcotics, place them on a steamer, and then take a different ship so that he would reach New York a week or more before the drugs arrived

(R. 79). He would then remain in New York until he and his partners sold the drugs, at which time he would go back to Europe with the money derived from the sale and return to New York in about six weeks with more drugs (R. 79).

The middlemen's group, as shown by the evidence, was closely connected with the smugglers' group. The principal members of the middlemen were the defendants Lucien Ignaro, "Jimmie the Blond" (Vincent Carreria), Louis Ruppolo, and Felix Papa, who formed a partnership in December, 1936, to deal in narcotics (R. 71, 73, 78, 103). Also associated with them was the defendant Sladyslaus Boysa (R. 114). Ignaro had been receiving shipments of drugs from Europe (R. 72-73) and in December, 1936, he expected a shipment of about 330 pounds of narcotics. "Jimmie the Blond" stated that he could sell these drugs. When they arrived, "Jimmie the Blond" was notified, and the partnership thereupon came into existence (R. 73). In January, 1937, Ignaro arranged for the removal of another shipment of about 300 pounds of narcotics from a ship (R. 74-75). A few days later, one Little Joe (defendant Joe Schipani, a local buyer of drugs), turned \$6,800.00 over to Ruppolo, "Jimmie the Blond" and Felix Papa. Ruppolo then met Ignaro and Boysa at 55th Street and 8th Avenue, New York (the Central Bar and Grill), and they drove to Brooklyn, where they met the smugglers, Joe Lago and Francois Caputo. Ignaro paid the money to Lago and Caputo and the drugs were then transferred to the car which Ruppolo was driving (R. 75-76, 115-116). The same procedure was followed a few days later when \$14,000.00 was given to Lago and

Caputo by Ignaro in payment for narcotics (R. 77-78).

The evidence showed that Ignaro and Louis Ruppulo conferred with the smugglers Caputo and Lago at the Central Bar and Grill, 55th Street and 8th Avenue (R. 79), and that Ruppulo and Ignaro had numerous conferences relative to the bringing of narcotics into the United States (R. 79). Ruppulo and Boysa would receive drugs from Lago (R. 80, 81), most of which were disposed of pursuant to arrangements made by "Jimmie the Blond" (R. 73, 76, 77, 82, 86-87). In April, 1937, Ruppulo received two kilograms of heroin from the defendant Vencileoni, and they, together with Ignaro, discussed the arrival of the next shipment which was expected on the S. S. *Normandie* about the end of that month (R. 87). The next shipment, which was obtained from Vencileoni arrived on either the *Normandie* or the *Ile De France*, at which time Ruppulo and his associates "had an agreement to buy all the stuff that Vencileoni brought in" (R. 88). Prior to the arrival of the second shipment, Ruppulo, Vencileoni, Ignaro, "Jimmie the Blond", Felix Papa, and "a man from the boat" had a conference about it (R. 89). Ruppulo was on board the *Normandie* three or four times (R. 100), it being the ship which was used to bring the narcotics to this country (R. 104). Ignaro paid the defendant Charley Morgan \$100.00 to take a package of narcotics off the *Normandie* in April, 1937, and at that time Ignaro had a talk with Vencileoni, who owned these drugs (R. 89, 117, 119). The drugs obtained from the *Normandie* were sold to Ignaro, Ruppulo, "Jimmie the Blond", and Papa (R. 119, 123-125).

Another group consisted of a ring of narcotic traffickers headed by the defendant Nicola Gentile, who purchased drugs from the middlemen for subsequent disposition to addicts in Louisiana and in Texas (R. 86, 89, 93). In February, 1937, Ruppolo and "Jimmie the Blond" went to Gentile's headquarters at 90 Elizabeth Street, New York City, to discuss the sale of opium on credit. Ruppolo told Gentile that Ignaro was the only person who would sell him narcotics on credit. A deal was then arranged whereby ten pounds of opium were sold to Gentile, payment to be made in eight days (R. 80). Ruppolo made a number of sales of opium to the defendant Louis King (R. 84), a member of the Gentile group, and also sold Gentile two kilograms of heroin which had been smuggled in on the *Normandie*. The price for these drugs was \$1,960.00. Gentile had a check from Texas but it was too late in the day to cash it, so he took the money from his safe at 90 Elizabeth Street and gave it to Ruppolo. The following day Ruppolo paid Vencileoni \$1,750.00 and received the two kilograms of heroin, which he (Ruppolo) delivered personally to the defendant Tony Lima (R. 86-87). According to Gentile, Lima was "his man in Texas" (R. 86), and Lima stated that the drugs were to be taken to Texas by bus, in a suitcase, by his daughters (R. 89). Ruppolo also went to New Orleans in September, 1937, and talked to Lima about purchasing narcotics (R. 93).

The drugs acquired by Gentile from the middlemen were disposed of in Texas and Louisiana by his associates (R. 148-151, 154-155). Various defendants transmitted money orders from New Or-

leans to Gentile and to the defendant Iacono¹ in New York (R. 156-159, 203-205, 209, 238-241, 362-364, 371, 373-375). Money orders were sent from defendants in New Orleans and Texas to other defendants in New York (R. 181-182, 203, 205-207, 361, 365, 371-372). Moreover, the defendant Gentile was in New Orleans in October, 1937 (R. 154), and was in Texas in August of that year (R. 236). A conference was held in the fishing camp of the defendant Joe Massa in Texas, in the summer of 1937, at which Gentile was present and was introduced to Massa as a big man in the narcotic business (R. 185). The defendant Joe Passarello also met Gentile in Houston, Texas, in a night club, and on other occasions in the home of the defendant Attardi. On the first occasion, Attardi told Passarello that Gentile was a "big boss" (R. 192-193). Joe Massa went to New York in April or May, 1936, and flew back to Texas with a quantity of morphine and heroin which he purchased from the defendant Casesa (R. 182).

The New York retailers' group, of which the petitioner was a member, likewise dealt with the middlemen. Early in 1936, Mauro, Alphonso, Ross and the petitioner decided to enter the narcotics business as partners, with headquarters in the rear of 380 Broome Street, New York City (R. 48, 56, 62). The drugs were kept in the cellar of 380 Broome Street (R. 49, 60) and the petitioner

¹ Iacono was convicted in the District Court (R. 345), but his conviction was reversed by the Circuit Court of Appeals because of insufficient evidence to establish his guilt (R. 421).

shared in the profits of this partnership (R. 49, 62). Ignaro had been selling drugs to Mauro, Bruno and Alphonso prior to the formation of the middlemen group (R. 71, 117), and when the middlemen formed their partnership in December, 1936, Ignaro and Ruppolo went to see Mauro at the latter's headquarters at 380 Broome Street (R. 72). Mauro asked Ignaro if "he had any more stuff", and Ignaro replied that it hadn't "come in from Europe yet, but that he expected it in a few weeks or months" (R. 72). An altercation ensued between Mauro and Ignaro, with the result that "Jimmie the Blond" was compelled to go to Mauro and straighten out the difficulties (R. 72-73).

At the time of the formation of the New York retailers' group, Alphonso said that he could get all the narcotics which were needed, and that they were to be brought to him "from Europe" (R. 49). In addition to the drugs which were smuggled from Europe, the partnership purchased 10 pounds of opium and 170 ounces of cocaine in December, 1936, from the defendant Mike Cellentano, who had smuggled the drugs from Canada (R. 35, 36, 61-62). Some of this cocaine was sold by Mauro to "Jimmie the Blond", who, together with Ruppolo, then sold it to Government witness Esch, a Narcotic Agent who investigated the case (R. 51-52, 62). Cellentano apparently had difficulties collecting for these narcotics from Mauro. Cellentano finally spoke to the petitioner at 380 Broome Street, told him that he (Cellentano) was having trouble getting his money, and asked the petitioner to intercede with Mauro. The petitioner stated that he would talk to Mauro and asked Cellentano

to send down the defendant La Rose (R. 36). Cellentano told the petitioner that the latter was to receive one-third of the narcotics, or one-third of the money received therefrom, for his assistance (R. 36-37). The petitioner then told Mauro to give Cellentano "some of the stuff and his money" and Mauro gave Cellentano "the stuff" (R. 52).

An instance indicating the nature of the dealings of Mauro and his associates with the smugglers occurred in December, 1935. The defendants Ignaro, Ruppolo and Ralph Liguorio had a conversation at the Central Bar and Grill, 55th Street and 8th Avenue, as the result of which Ruppolo and Liguorio drove to 380 Broome Street where they met Al Mauro (R. 67). Liguorio entered the building and "sat at a table with Al Mauro and a few people" (R. 106). He then reentered the car, showed Ruppolo \$3,000.00 which had been given him by the people at 380 Broome Street, and stated that Al Mauro was the boss of that neighborhood with Don Alphonso (R. 67-68). Liguorio and Ruppolo then drove to Brooklyn and met Ignaro and John Caputo. Liguorio haggled over the price of drugs but Caputo refused to sell them cheaply. Liguorio and Ruppolo drove to another place where they met a pick-up car and received a package of narcotics. These drugs were delivered to Al Mauro and three or four other people at 380 Broome Street (R. 68-69, 106-107). The same procedure was then repeated immediately (R. 69-70).

The petitioner was also involved in May, 1937, with the defendant La Rose in an attempt either to sell Narcotic Agent Esch some narcotics or to swin-

dle him out of a sum of money (R. 26-27). At this time Esch had several conversations with Mauro, Ruppolo, and other defendants about the petitioner. Esch told Ruppolo that he had an opportunity to buy cocaine from the petitioner, and was informed in a subsequent conversation with Ruppolo that he would have to reach the petitioner through someone who was more reliable than La Rose (R. 30-31).

The Central Bar and Grill, 55th Street and 8th Avenue, New York City, was the headquarters of the middlemen (R. 70-71). It also was the common meeting place of the middlemen and the smugglers, and many other defendants not actual partners in any of the four groups also appeared at that place. The record shows that Vencileoni of the smugglers frequented the Central Bar and Grill and while there discussed with Ignaro and Ruppolo (of the middlemen) the arrival of drugs on the *Normandie* (R. 87, 89, 101); and Ignaro and Ruppolo also met and conferred there with "Frenchie" Caputo of the smugglers (R. 79). Other defendants who appeared at the Central Bar and Grill were Cellentano (R. 23), Ralph Liguorio (R. 67, 102, 106-107), Dominick Visco (R. 82-83), Louis Liguore (R. 100, 101, 117) and Charlie Morgan (R. 118). In addition, "Jimmie the Blond" of the middlemen operated from 141 Mulberry Street, where he and Ruppolo kept narcotics and made arrangements for their sale and distribution (R. 70-71, 72, 75, 78, 80-81). Mauro of the New York retailers on one occasion called Ignaro at the Central Bar and Grill (R. 72), and, on another occasion spoke to Ruppolo about cocaine in

front of 141 Mulberry Street (R. 92). There was also testimony that the petitioner had been down to "Jimmie the Blond's" place (presumably 141 Mulberry Street) bothering him for \$500.00 which "Jimmie the Blond" and Ruppolo owed for a loan of cocaine which they obtained from Mauro (R. 113).

SUPREME COURT OF THE UNITED STATES.

No. 300.—OCTOBER TERM, 1939.

Jerry Bruno, Petitioner,
vs.
United States of America, Respondent.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Second Circuit.

[December 4, 1939.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

In affirming the conviction of Jerry Bruno, who, with eighty-seven others, was convicted of a conspiracy to violate the narcotic laws, the Circuit Court of Appeals for the Second Circuit dealt with an important question in the administration of federal criminal justice in such a way as to lead us to grant certiorari, 308 U. S. —

Some of Bruno's co-defendants took the witness-stand. He did not. The trial court gave the following instructions to the jury regarding the attitude to be observed by them towards the accused as a witness:

"It is the privilege of a defendant to testify as a witness if, and only when, he so elects; and when he does testify his credibility is to be determined in the light of his interest, which usually is greater than that of any other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony."

Bruno requested this additional instruction:

"The failure of any defendant to take the witness stand and testify in his own behalf, does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner."

The trial judge declined this request, saying "I feel that I've already covered that." The exception to this denial having been saved, the Circuit Court of Appeals found no error in the refusal, although confessing that the guidance which had been given the jury "was not the equivalent of what the defendant had requested",

Bruno v. United States, 105 F. (2d) 491. "By this, we take it, the court below meant that the topic on which Bruno proffered an instruction had not been charged at all.

Therefore, the narrow question before us is whether in these circumstances Bruno had the indefeasible right to have the jury told in substance what he asked the judge to tell it. The issue is determined by a proper application of the Act of March 16, 1878, 20 Stat. 30, now 28 U. S. C. § 632.¹

That Act freed the accused in a federal prosecution from his common law disability as a witness. But Congress coupled his privilege to be a witness with the right to have a failure to exercise the privilege not tell against him. The accused could "at his own request but not otherwise be a competent witness. And his failure to make such a request shall not create any presumption against him." Such was the command of the law-makers. The only way Congress could provide that abstention from testifying should not tell against an accused was by an implied direction to judges to exercise their traditional duty in guiding the jury by indicating the considerations relevant to the latter's verdict on the facts. *Sparf v. United States*, 156 U. S. 51. By legislating against the creation of any "presumption" from a failure to testify, Congress could not have meant to legislate against the psychological operation of the jury's mind. It laid down canons of judicial administration for the trial judge to the extent that his instructions to the jury, certainly when appropriately invoked, might affect the behavior of jurors. Concededly the charge requested by Bruno was correct. The Act of March 16, 1878, gave him the right to invoke it.

A subsidiary question remains for determination. It derives from the Act of February 26, 1919, 40 Stat. 1181, 28 U. S. C. § 391,² whereby appellate courts are under duty in

¹ Section 632: "In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him."

² Section 391: "All United States courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

criminal as well as in civil cases to disregard "technical errors, defects, or exceptions which do not affect the substantial rights of the parties." Is the disregard of the right which Congress gave to Bruno, an error, the commission of which we may disregard? We hold not. It would be idle to predetermine the scope of such a remedial provision as § 391 by anticipating the myriad varieties of rulings made in trials and attempting an abstract, inclusive definition of "technical errors". Suffice it to indicate, what every student of the history behind the Act of February 26, 1919, knows, that that Act was intended to prevent matters concerned with the mere etiquette of trials and with the formalities and minutiae of procedure from touching the merits of a verdict. Of a very different order of importance is the right of an accused to insist on a privilege which Congress has given him.

To the suggestion that it benefits a defendant who fails to take the stand not to have the attention of the jury directed to that fact, it suffices to say that, however difficult it may be to exercise enlightened self-interest, the accused should be allowed to make his own choice when an Act of Congress authorizes him to choose. And when it is urged that it is a psychological impossibility not to have a presumption arise in the minds of jurors against an accused who fails to testify, the short answer is that Congress legislated on a contrary assumption and not without support in experience. It was for Congress to decide whether what it deemed legally significant was psychologically futile. Certainly, despite the vast accumulation of psychological data, we have not yet attained that certitude about the human mind which would justify us in disregarding the will of Congress by a dogmatic assumption that jurors, if properly admonished, neither could nor would heed the instructions of the trial court that the failure of an accused to be a witness in his own cause "shall not create any presumption against him."

We conclude that the substance of the denied request should have been granted, and the judgment therefore is

Reversed.

Mr. Justice McREYNOLDS concurs in the result.